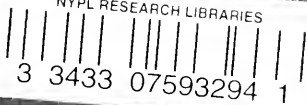
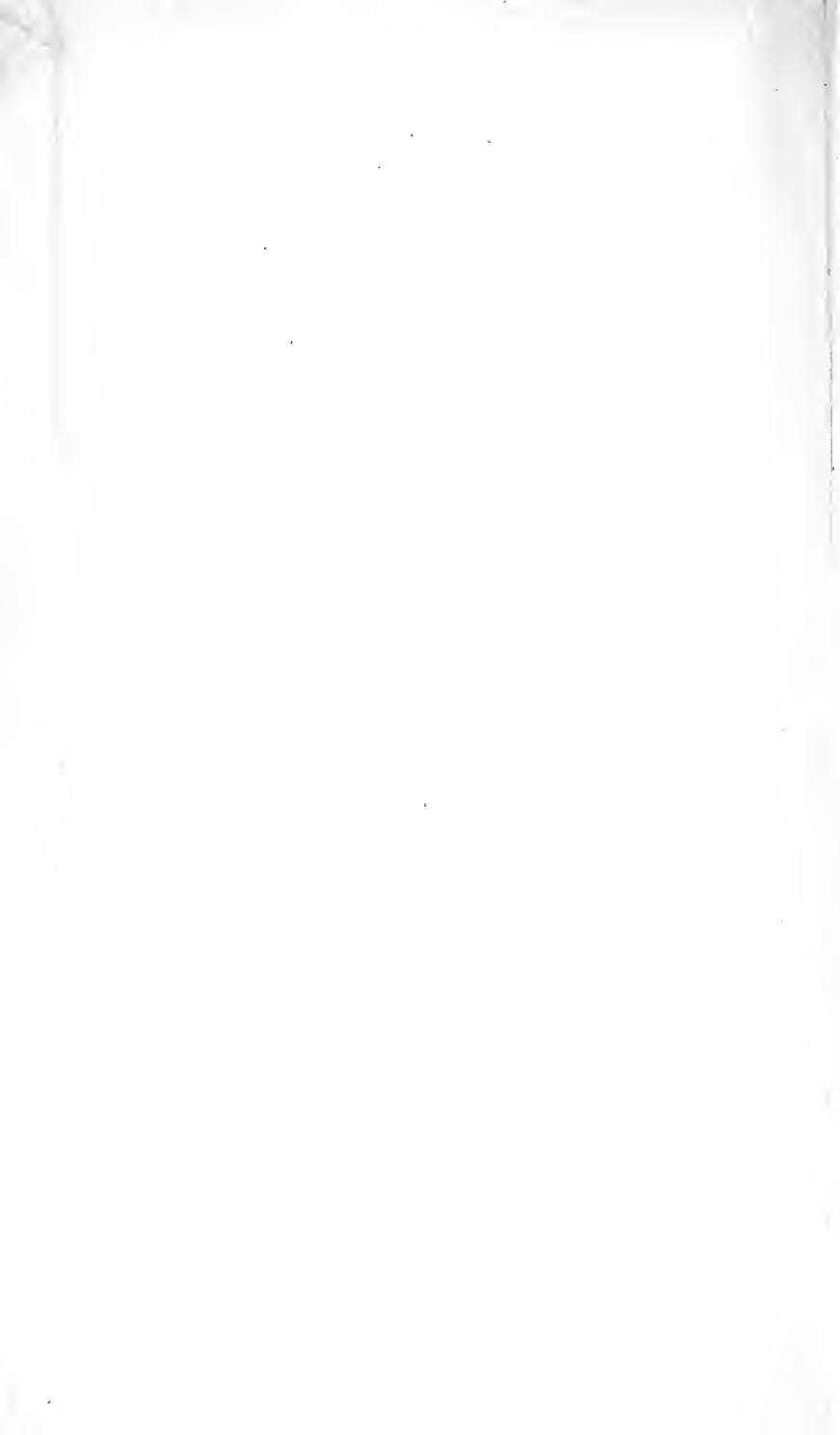


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RIGHTS OF AMERICAN CITIZENS.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES.

IN ANSWER TO

Resolved, at the House of November 25, 1867, relative to trial and conviction of American citizens in England for rebellion.

January 10, 1868. — Forwarded to the Committee on Foreign Affairs and ordered to be printed.

At the House of Representatives of the United States.

In answer to the resolution of the House of Representatives of the 25th of November, 1867, calling for information in relation to the trial and conviction of American citizens in Great Britain and Ireland for the two years past, I transmit a partial report from the Secretary of State, which is accompanied by a relation of the papers called for by the resolution.

ANDREW JOHNSON.

WASHINGTON, February 10, 1868.

DEPARTMENT OF STATE.

Filed, *gao*, February 6, 1868.

The Secretary of State has reported answer to the resolution of the House of Representatives of the 25th of November, 1867, requesting a copy of all the correspondence connected with the Department of State for the two years last past, in the arrest, imprisonment, trial or conviction of any American citizen or any person claiming to be such, in Great Britain and Ireland, and the honor to lay before the President the papers mentioned in the report. The remaining portion of the correspondence will be prepared and transmitted as early a period as the pressure of business and the duties of this department will permit. The transmission of this correspondence in documents is adopted in view of the importance of the subject, the voluminousness of the papers, and the desirability of an adjustment of questions involved in the action which the papers relate, affecting the rights of individual citizens of the United States.

Respectfully submitted:

WILLIAM H. SEWARD

The President

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CORRESPONDENCE.

Mr. Seward to Mr. Adams.

No. 1860.]

DEPARTMENT OF STATE,
Washington, October 13, 1866.

SIR: I enclose herewith a communication of the 29th ultimo from George Archdeacon, a naturalized citizen of the United States, who, it appears, has suffered imprisonment in Ireland by the British government on a charge of suspicion of complicity with the late Fenian movement.

Mr. Archdeacon makes certain statements in regard to the proceedings of Mr. West, the United States consul at Dublin, which I will thank you to investigate, with a view to informing me of the result.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Archdeacon to Mr. Seward.

1,607 HELMOUTH STREET,
Philadelphia, September 29, 1866.

SIR: I have taken leave to enclose you a memorial to his Excellency President Johnson, praying for redress of grievance endured by me in England and Ireland within the last twelve months, earnestly requesting that you will, after perusal, forward it to its destination and urge the fulfilment of its prayer, if you are satisfied of the truth of the statements it contains.

I trust, sir, that if there be anything informal in the memorial, or any breach of etiquette committed in its transmission, you will attribute it to my inexperience in such matters, and not to any want of profound respect for his excellency the President, or yourself.

'Tis true I have the honor of acquaintance with many influential lawyers and gentlemen of vast intelligence in the State, any one of whom would, I am convinced, gladly forward any complaint; but fully relying on the President's justice and yours, and conscious of my own innocence and ill treatment, and of the simplicity and obviousness of my case, I determined thus to apply.

I am, sir, with profound respect, your obedient servant,

GEORGE ARCHDEACON,

An American Citizen.

HON. WILLIAM H. SEWARD,
Secretary of State.

Mr. Archdeacon to President Johnson.

TO HIS EXCELLENCY ANDREW JOHNSON,
President of the United States, &c., &c.:

The memorial of George Archdeacon, of 1,607 Helmouth street, Philadelphia, most respectfully sheweth, that your excellency's memorialist is a citizen of the great republic of which you are chief magistrate, having duly obtained his last papers of naturalization on the first day of December, 1854.

That in the year 1862 memorialist proceeded to Liverpool to obtain a sum of money due to his wife; but not being successful, he sought for and procured a few agencies for American and Irish books and newspapers, to enable him to support himself whilst delayed in the country.

That on the 23d of September, 1865, he was arrested in his place of business upon a warrant for high treason, signed by the lord lieutenant of Ireland, and conveyed, handcuffed, by detective officers to the city of Dublin.

That although the common informer Nagle was unable to identify him, and neither arms, ammunition nor treasonable papers were found upon his person nor in his house, yet memorialist was fully committed for trial on the 5th day of October, 1865.

That memorialist, immediately after his arrest, feeling conscious that there was no real charge against him, and that his arrest was on mere suspicion, applied to Mr. West, the American consul, for protection, and had a lengthened correspondence with that gentleman, a correspondence now in the possession of memorialist; and in the course of which Mr. West repeatedly and to his great surprise declared his belief, that once an Irish adopted citizen touched British or Irish soil again, he to all intents and purposes became a British subject—a doctrine which, after his solemn oath of allegiance to the United States and abjuration of allegiance to Queen Victoria, memorialist could not and would not accept.

That upon many occasions, as the correspondence referred to in the last paragraph will show, the consul, Mr. West, sought to induce memorialist to plead guilty, and upon one occasion, when Mr. West visited him, he heard that gentleman tell the governor that he was sent to Archdeacon to say that the British attorney general would make memorialist's punishment light if he pleaded guilty, but if he went to trial he would give him ten years' penal servitude.

That on the 9th of February, 1866, memorialist, upon the application of his solicitor, after the attorney general admitted in court that he had not sufficient evidence to put him on trial, was admitted to bail and made to sign a bond for two hundred pounds himself and two sureties for the sum of one hundred pounds each, the condition of the bond being that memorialist should abide his trial at the next commission to be held in Dublin.

That memorialist, at a very heavy expense, returned to Dublin from Liverpool to fulfil the conditions of his recognizance and remained there until his last dollar was expended, without obtaining any information as to whether he would be tried or not; and finally, that from Liverpool, and through Mr. West, the consul, he made an application to have his bail discharged, and his seized property restored to him, to which application and through Mr. West he received an answer, saying, that if he gave new bail to return at once to America, and not to visit England, Ireland or Scotland for three years, his former recognizance would be discharged, and his books and papers not treasonable restored to him.

That memorialist, under these unpleasant circumstances, prostrated in health after five months' close and solitary confinement, prostrated in business by the action of the British government on mere suspicion, deprived of papers, books, family documents, and other property valuable to him, and subjected to a most unnecessary and irksome police espionage, and totally unable to procure the high bail required, resolved at once to return to the land of his adoption, and lay his case before you, confident that in your justice you will see reason to protect him, humble a citizen as he is of the great republic over which you preside, and not allow a foreign country to ignore his just rights; but call upon the law officers of Britain to return memorialist's property and grant him redress for the loss he has sustained.

Finally, memorialist, feeling a deep interest, in common with hundreds of thousands of true Irish-American citizens, in the question of our rights as openly

sworn citizens of the United States, when business or pleasure induced one or more to visit Britain or Ireland, respectfully prays of you, in addition to his other request of personal restitution, to set this matter at rest, so that adopted citizens generally may know their real standing in foreign countries, and the value from home of that citizenship of which they are so proud here.

Memorialist trusts the nature of his claim and the interest involved will induce your excellency to pardon the length of his appeal, and grant him a favorable answer. And he has the honor to subscribe himself your excellency's obedient servant,

GEORGE ARCHDEACON.

Mr. Seward to Mr. Adams.

No. 1861.]

DEPARTMENT OF STATE,
Washington, October 13, 1866.

SIR: I transmit a copy of a communication of the 7th of August last, addressed to the President by Mr. Patrick J. Condon, in regard to his alleged illegal imprisonment and ill treatment at Dublin, on suspicion of complicity in Fenian conspiracies. Mr. Condon also brings charges against Mr. West, our consul at Dublin.

These papers are enclosed to you in order that a copy may be placed in the hands of Mr. West, whom you will inform that his answer will be expected here in order that his case may be taken into consideration.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

The President to Mr. Seward.

EXECUTIVE MANSION, October 5, 1866.

Encloses report of Captain P. J. Condon of his illegal imprisonment by the English government in Dublin on suspicion of being a Fenian.

Respectfully referred to the honorable Secretary of State.

By order of the President :

ROBERT JOHNSON,
Private Secretary.

Mr. Condon to President Johnson.

NEW YORK, August 7, 1866.

To his Excellency the PRESIDENT of the United States :

I would most respectfully submit to the President the following plain statement of facts in connection with my recent imprisonment by the British authorities in Ireland. I consider it incumbent on me, as an honorable and faithful citizen of the republic, to lay before the whole American people the manner in which myself and others have been treated by a foreign power, together with unveiling the flunkeyism of at least one official, (Mr. West, United States consul for Dublin,) who has fallen far short, as the subjoined correspondence will show, in sustaining the dignity of an American freeman. I have sufficient proof in my possession to stamp Mr. West more the hireling of the British govern-

ment than the servant of the people who have so highly honored him with the important office he has so much degraded. The following is the entire correspondence which has passed between myself and Mr. West during my imprisonment in Ireland, and will explain itself:

CELL No. 39, KILMAINSHAM JAIL,
March 9, 1866.

SIR: I am a citizen of the United States of America, and have my residence in New York city. I was arrested in my lodgings at Harold's Cross, Dublin, on the morning of the 23d ultimo, by Acting Inspector Clifford and a squad of the detective force. I was conveyed to Chancery Lane station, where, in company with two others, I was confined for four days and three nights in a filthy, loathsome cell, or privy, without any sleeping accommodations. Were it not for the humane attentions extended towards us by the police of that station belonging to A division—attentions shown to us at the risk of dismissal—I feel impressed with the belief we should have perished. I was conveyed to this prison on the night of the 26th ultimo, where I am still confined. No cause, so far, has been assigned for my arrest. A duplicate of my citizenship paper was taken and is still detained from me, together with other property of mine. I claim from the American consul here the protection of my government.

Very respectfully,

PATRICK J. CONDON.

Mr. WEST, *American Consul, Dublin.*

UNITED STATES CONSULATE,
Dublin, April 21, 1866.

DEAR SIR: I have the honor to inform you that, acting under instructions, I have again drawn the attention of his excellency the lord lieutenant to your case, and urged his consideration thereof, and sincerely hope that the result will be a favorable one.

Yours, very truly,

WILLIAM B. WEST, *Consul.*

UNITED STATES CONSULATE,
Dublin, April 28, 1866.

DEAR SIR: Referring to my note to you of the 21st instant, I much regret to have to inform you that the reply of his excellency the lord lieutenant is decidedly unfavorable to the recognition by him of your claim to be a citizen of the United States; but I shall be most happy to continue to do whatever is in my power to assist you. Yet, inasmuch as there will be a long delay in the settlement of this question of allegiance, should the Irish executive be disposed to liberate you conditionally at an early day, it will be for you to consider whether it be not expedient to accept the terms that might be offered; and

I am yours, very truly,

WILLIAM B. WEST, *Consul.*

Captain CONDON, *Mount Joy Prison.*

MOUNT JOY PRISON, April 30, 1866.

DEAR SIR: Yours of the 21st came duly to hand, as also your note of the 28th instant, from which I, for the first time, learn that the Irish executive of the British government does not recognize my claim to be a citizen of the United States. As I have no doubt this question of allegiance will cause a dispute between both governments, I, sir, will abide the issue, well believing that my government will take a bold and dignified stand on this important question. No conditions of release have been as yet offered me; and if there should, it will be useless to require any conditions short of allowing me to be a free agent of my own actions. I shall patiently await your further official communications.

I am, very truly, yours,

PATRICK J. CONDON.

WM. B. WEST, Esq.,
United States Consul, Dublin.

UNITED STATES CONSULATE,
Dublin, May 9, 1866.

DEAR SIR: In reply to yours of the 30th ultimo, which great press of business prevented my earlier attention to, all I can say further on the subject is to refer you to my last note of the 28th ultimo, which I conceive to be applicable to your case, and be assured I shall still continue to use my best exertions as far as in my power.

Yours, very truly,

WILLIAM B. WEST,
United States Consul.

Mr. PATRICK J. CONDON,
Mount Joy Prison, Dublin.

UNITED STATES CONSULATE,
Dublin, June 8, 1866.

DEAR SIR: It is now nearly three months since I first suggested to you the necessity of your procuring a certificate of your naturalization as a citizen of the United States, and feel surprised that you have not as yet furnished me with the same; and, inasmuch as it is impossible for me to make a satisfactory application to this government on behalf of any prisoner for whom I cannot produce proof of naturalization, I think it right, therefore, to again draw your attention to the matter, and to express the hope that you will be enabled to supply the necessary evidence without much further delay. Believe me to remain,

Yours, very truly,

WILLIAM B. WEST, *Consul.*

Captain CONDON, *Mount Joy Prison.*

MOUNT JOY PRISON, *June 10, 1866.*

DEAR SIR: Yours of the 8th instant came to hand yesterday, in which you state, "It is now nearly three months since I first suggested to you the necessity of your procuring a certificate of your naturalization as a citizen of the United States, and feel surprised that you have not as yet furnished me with the same."

Allow me to state that this is the first time any such application has reached me; and indeed, I considered there was no necessity for such request, as I informed you in my first communication from Kilmainham jail, between the 5th and 10th of March last, that the officer, Acting Inspector Clifford of the detective force, took my naturalization paper from me on my arrest, which he or the British authorities in Dublin still hold, I presume. Inform me if this is sufficient to identify me a United States citizen; and if not, I can find evidence in this prison to satisfy you, perhaps—citizens of the United States, who know me to be their fellow-citizen. It will be of importance to me to know whether you received the communication or not I addressed to you between the 5th and 10th of March last from Kilmainham jail. Please inform me at your leisure.

I am truly yours,

PATRICK J. CONDON.

W. B. WEST, Esq., *Consul, Dublin.*

UNITED STATES CONSULATE,
Dublin, June 16, 1866.

SIR: I have to acknowledge the receipt of your letter of the 10th instant, and to inform you that no other evidence will supply the want of your naturalization certificate, which you can send me when it is in your power to do so. I could not have received the letter you allude to, as I cannot find it; and

I am your obedient servant,

WILLIAM B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison, Dublin.

MOUNT JOY PRISON, *June 26, 1866.*

SIR: I enclose an authenticated duplicate of naturalization certificate. The visiting director of this prison has procured it for me from the detective police officer, Dublin, where it has been since my arrest. You will please acknowledge the receipt of same, and state if you require anything further.

Very respectfully, yours,

PATRICK J. CONDON.

Mr. WILLIAM B. WEST,
United States Consul.

UNITED STATES CONSULATE,
Dublin, June 28, 1866.

SIR: I have to acknowledge the receipt of your letter of the 26th instant, enclosing your certificate of naturalization, and I have to inform you that no further evidence of that fact is necessary.

I remain yours, very truly,

WILLIAM B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison.

UNITED STATES CONSULATE,
Dublin, July 4, 1866.

SIR: I am happy to inform you that his excellency the lord lieutenant has been pleased to order your liberation, on condition that you return direct to the United States. In haste,

Yours, obediently,

WILLIAM B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison.

MOUNT JOY PRISON, *July 10, 1866.*

SIR: On the 4th instant, the governor of this prison read for me my conditional discharge, which was in substance, as follows:

That I should go from here to Queenstown, under police escort, and there take passage in a packet-ship for the United States direct, and not return to Ireland within a reasonable time. I immediately refused to accept of my release on those conditions, and informed the governor that I had business of considerable importance to myself to arrange in this country and in Scotland before leaving Europe; and also that I wished to go under medical treatment for a short time, as my health was much impaired by confinement. Your letter of the 4th reached me on the 5th instant, which left me no other alternative than to recall my non-acceptance of release by acceptance of the conditions offered. Now, sir, I wish to be informed by you if those conditions are accepted of for me by the United States government? If they are, I shall conclude that grave and pressing reasons have urged upon it the humiliating necessity of consenting to have its citizens—who are neither charged nor convicted of any crime—marched like common malefactors through the thoroughfares of a foreign country, to its very confines, and from thence banished. I say if such necessity exists, I bow my head to the stroke; but if not, I shall sooner find a grave here—which I am very likely to do, if I am kept much longer in confinement, as my health is bad—than accept of terms which would lessen me even in my own estimation.

I respectfully demand that you send this letter, or a copy of it, to our minister to London, the reply to which by him I will anxiously look for. I prefer adopting this course of sending to him, through you, than writing to himself direct.

Very respectfully, yours,

PATRICK J. CONDON.

Mr. W. B. WEST, *United States Consul.*

UNITED STATES CONSULATE,
Dublin, July 12, 1866.

SIR: I beg to acknowledge the receipt of your letter of the 10th instant, received by last night's post, and in reply inform you that my letter to you of the 4th instant was intended merely as an official notice to you of your liberation, and the conditions thereof so far I was informed by this government. In reply to your question if the terms of your release, that you should be escorted to the ship by police, which I learned for the first time from your letter, are accepted for you by the United States government, I have to say that I have received no authority to accept or reject any conditions that this government may think necessary to impose for your release, and am in no way responsible for the action of the Irish executive in relation to such conditions, which it will be entirely for you to consider the expediency of accepting or not.

I have, as you requested, forwarded a copy of your letter to Mr. Adams.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison.

UNITED STATES CONSULATE,
Dublin, July 14, 1866.

SIR: I have, as you wished, transmitted your letter to me to Mr. Adams, and now inform you that my reply thereto is approved by him. I can now only express my regret that the authorities should have thought so unfavorably of your case as to impose conditions on your liberation to which you object. I shall, however, continue my services on your behalf, whenever a favorable opportunity shall be presented for doing so.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison.

Certain important portions of the above correspondence of Mr. West show in themselves such entire want of veracity, that no explanation of mine is necessary to prove here the truth of the allegations. They are self-evident.

Mr. West states in his letter of July 12 that he received the information of the exact terms of release for the first time from my last letter to him of July 10. On this point I can furnish evidence where Mr. West discussed with certain parties on the subject, three days at least prior to his having received the information from my letter of July 10, and in one of those meetings in conference with a lady, whose husband was also a prisoner, he, Mr. West, exhibited very strong symptoms of pretended indignation at the terms of release offered to, not alone her husband, but several other United States citizens, which terms were the same as those offered me.

I was informed by the British authorities that I would get ten days to leave Ireland for the United States direct, if I would petition for it, which I declined doing, and accepted of the police escort in preference, leaving per steamship City of New York on the 19th of July last.

All the United States citizens confined with me were subjected to the grossest indignities while in prison; and on the last anniversary of our national independence, when I proposed celebrating that ever-to-be-remembered day by a cheer, loud, long, and heartily responded to, not alone by every United States citizen, but every Irishman within hearing, the severest sentence was passed on myself and others for a breach as it were of prison discipline—one month in solitary confinement and three days on bread and water. I felt the effects of this sentence telling so fearfully on my already shattered constitution that I left the prison on the conditions accepted for me by the consul, in preference of giving them a chance of scratching my epitaph on the sanctified mud of Mount Joy Prison grounds.

If your excellency will come to the just conclusion, that one or more officials have betrayed the trust reposed in them, by which myself and others have suffered, I have no doubt but you will order their removal from office, and by so doing you will put a stop to similar grievances in the future.

I will expect an early reply from your excellency, and believe me to be a devoted citizen of the republic.

Most truly, yours,

PATRICK J. CONDON,
No. 1 Perry Street, New York,
Late Captain 63d N. Y. S. V., Irish Brigade.

Mr. Adams to Mr. Seward.

No. 1276.]

LEGATION OF THE UNITED STATES,
London, November 23, 1867.

SIR: I have the honor to transmit the replies made by Mr. West, acting consul at Dublin, to the respective memorials of George Archdeacon and Patrick

J. Condon, which were sent to me by the department with despatches Nos. 1860 and 1861, and which I was desired to submit to that gentleman for his consideration.

I can only say, in addition that the position of Mr. West, throughout the difficulties attending the Fenian agitation in Ireland, was an exceedingly difficult one; that in almost every step which he took he communicated with me, and obtained such advice as I had it in my power to render to him; and that to his assiduous labors it is mainly owing that the gratifying result of effecting the liberation of every person known to be a citizen of the United States was ultimately attained.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Reply of Mr. William B. West, acting consul at Dublin, to the memorial of Mr. George Archdeacon, addressed to his Excellency the President of the United States.

It appears that Mr. Archdeacon, who is a naturalized citizen of the United States, returned to England in 1862, and took up his residence in Liverpool, where he became a bookseller and newspaper agent.

In September, 1865, he was arrested under the treason-felony act, upon a warrant of the lord lieutenant of Ireland, and conveyed from thence to Richmond prison, Dublin.

Immediately after his arrival in Dublin, he wrote to me, stating that he was arrested on a charge of treason, and requested my interference on the ground of his being an American citizen. In reply to which I informed him that I would willingly aid him with my counsel and advice and render him every assistance, as far as my official position would permit.

On the 3d of January, 1866, I addressed a letter to the then attorney general for Ireland, on his behalf and that of another citizen named Michael O'Boyle, then in Kilmainham jail, to which I received the following reply:

With respect to O'Boyle and Archdeacon, I cannot recognize them as American citizens, especially the latter, who has kept a shop in Liverpool for years. I am, however, not disposed to be severe, and if they plead guilty and throw themselves upon the leniency of the crown, I will consider their cases favorably.

Acting on this suggestion, I waited on Mr. Archdeacon to inform him of the result of my application to the attorney general on his behalf, and on the following day, the 10th January, I received a note from Mr. Archdeacon, in which he thanks me for my visit of the previous evening.

On the 11th of the same month I again wrote to the attorney general, as follows:

UNITED STATES CONSULATE,

Dublin, January 11, 1866.

SIR: I have the honor to send you, annexed hereto, copy of a letter addressed to me from Kilmainham jail by Mr. George Archdeacon, which I trust you will deem, from its tone and spirit, deserving your kind consideration, and entitling him, as I respectfully submit it does, to the clemency of your government.

I think its perusal must impress itself favorably on any reader, and as the honest declaration of a man matured by age, and whose gray hairs strongly attest his innocence of complicity in so wild and senseless a project as that with which he is charged, gives to him an almost irresistible claim to the humane consideration of the authorities.

I have the honor to be, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

The Right Hon. the ATTORNEY GENERAL,
Dublin Castle.

To which I received the following reply :

January 12, 1866.

SIR : I have considered your letter in reference to Mr. George Archdeacon and his letter accompanying same, and regret that I cannot, consistently with my duty, allow Mr. Archdeacon to go free. I find that he has been for a long time connected with societies of a treasonable character, and was very active in the Fenian organization in Liverpool. The Crown has a case against him which must end in a conviction; but if he pleads guilty and throws himself upon the clemency of the Crown, I shall not press for an extreme punishment.

If he does not do this the law must take its course.

I remain yours faithfully,

JAMES A. LAWSON.

WILLIAM B. WEST, Esq.,
United States Consul.

On the receipt of that letter, I felt it my duty to apply to the Crown solicitor for copies of the sworn informations in the case, which were freely furnished to me, and from a careful perusal of them a strong case of complicity with Fenianism was shown against Mr. Archdeacon.

On the 15th of the same month I had a further interview with Mr. Archdeacon and mentioned that I had obtained copies of the informations against him, &c., when he informed me that he was willing to plead guilty to having been an agent for the sale of *The Irish People* newspaper. I then proceeded from the prison to the office of the Crown solicitor, at Newgate, to inform him of Mr. Archdeacon's offer, the result of which I communicated to Mr. Archdeacon in the following words :

UNITED STATES CONSULATE,
Dublin, January 15, 1866.

SIR : Since my interview with you this morning I went to consult the Crown solicitor on your case, in his office at Green street, in order to ascertain how far your mode of pleading guilty would be available to you and entitle you to the clemency of the government; and I find nothing will be received but the general plea that you are guilty of conspiring against the Queen's authority in Ireland, proved beyond doubt by the fact of your being an active agent for *The Irish People* newspaper, and for the Chicago fair, the proceeds of which were, as proved, to revolutionize Ireland, &c.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

Mr. GEORGE ARCHDEACON,
Kilmainham Jail.

Mr. Archdeacon not having been brought to trial at the next term of court, he was admitted to bail by the Crown without my knowledge, or any interference on my part.

On his discharge from prison he proceeded to Liverpool, and wrote to me from thence, on the 25th of March, asking me to forward his application to the attorney general to have his bail discharged to enable him to return to America.

In compliance with that request I wrote to the attorney general on the 9th of April, of which the following is a copy :

UNITED STATES CONSULATE,
Dublin, April 9, 1866.

SIR : I beg most respectfully to enclose you an application from Mr. George Archdeacon, now in Liverpool, that you will kindly order his bail to be discharged to enable him to return to the United States.

While I do not vouch for the truth of his statement, may I venture to express the hope that his request may meet your favorable consideration.

I have the honor to be, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

The Right Hon. the ATTORNEY GENERAL,
Dublin Castle.

On the same day I addressed Mr. Archdeacon in the following terms :

UNITED STATES CONSULATE,
Dublin, April 9, 1866.

SIR : Great pressure of business prevented my giving an earlier reply to yours of the 25th March, which I have, in accordance with your wishes, laid before the attorney general, and

sincerely hope that he may be disposed to think favorably of your application to have your bail discharged, and thus enable you to return to your adopted country; the result of which you shall be informed in due course.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

Mr. GEORGE ARCHDEACON.

To which note I received a reply, from which I make the following extract :

22 BIRCHFIELD STREET, *April 16, 1866.*

SIR: I had great pleasure in receiving your most courteously forwarded reply to my application for the discharge of my bail and the return of my papers, and I have again to thank you for the very great interest you have evinced in my case.

I am, sir, your obedient servant,

GEORGE ARCHDEACON,
An American Citizen.

WILLIAM B. WEST, Esq.,
United States Consul, Dublin.

On the 14th of April I again wrote to Mr. Archdeacon, enclosing a copy of a letter from Sir Thomas Larcom, under-secretary for Ireland, which I beg to submit, as follows :

DUBLIN CASTLE, *April 13, 1866.*

SIR: In reply to your letter of the 9th instant, relative to the case of Mr. George Archdeacon, I am directed by the lord lieutenant to acquaint you that the attorney general has no objection to discharge Mr. Archdeacon's bail and allow him to return to America, if he gives security for his not returning to this country, or England, or Scotland, for three years.

The attorney general will also direct all his papers, not of a treasonable character, to be returned.

I am, sir, your obedient servant,

THOMAS A. LARCOM.

WILLIAM B. WEST, Esq.,
United States Consul, Dublin.

On the 16th of April I received a letter from Mr. Archdeacon asking me to urge the attorney general not to insist on the bail for £200—as security that he would leave the country and not return—but to be satisfied with his own recognizances, to which letter I felt it my duty to reply as follows :

UNITED STATES CONSULATE,
Dublin, April 27, 1866.

DEAR SIR: In reply to yours of the 16th instant, I have already so frequently written to the attorney general for Ireland on your case, that I am most reluctant to trouble him further on the subject, particularly when I consider that the further application you wish me to make will not be successful, as he would naturally reply that those persons who are already bail for you to appear when called on, could have no objection to continue their security that you would not return to this country for three years.

I would gladly aid you with any influence which my position gives me, but I could not lend myself to make proposals which I have reason to believe might not be granted. The bail required by the attorney general is the merest possible matter of form.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

Mr. GEORGE ARCHDEACON,
22 Birchfield street, Liverpool.

When Mr. Archdeacon stated in his memorial that I was sent to him to induce him to plead guilty, he must have forgotten that in his letter to me, of the 2d May, 1866, he wrote as follows :

In January you did me the favor of calling at Kilmainham, and stating to me, or rather reading to me from the attorney general's letter to you, that he had evidence to convict me, and would be satisfied only with a plea of guilty being recorded for me, when my punishment would be light, which proposition on his part I unhesitatingly rejected.

In the same letter just quoted, Mr. Archdeacon says : " I now request of you not to pursue any further my late application to the Irish executive to have my bail discharged and my books and papers restored upon my giving personal security to return to America ;" which concluded the correspondence in the case.

It is true that I did feel it my duty, in answer to the remonstrance and per-

empty demands of Mr. Archdeacon for my intervention on his behalf, to inform him that the British government persistently claimed him and all those born and found on its soil as its subjects, (a position, I added, the United States government never would concede,) but in my correspondence with the Irish executive I carefully avoided any allusion to the question of allegiance, believing that that subject was not within the scope of my consular duties.

I now beg, respectfully, to submit the foregoing simple narrative of facts in the case of Mr. Archdeacon, with the hope that his Excellency the President will, on perusal thereof, be of opinion that I have not been delinquent or neglected my duty towards Mr. Archdeacon, but that I did all in my power for him and his interests whilst a prisoner in the hands of the British government.

WILLIAM B. WEST,
Acting Consul.

UNITED STATES CONSULATE,
Dublin, November 7, 1866.

Reply of Mr. William B West, acting consul at Dublin, to the complaint against him by Mr. Patrick J. Condon, addressed to his Excellency the President of the United States.

Mr. Condon, as he states, was arrested in Dublin on the 23d of February, 1866, and shortly after was conveyed to Kilmainham jail. He alleges that he wrote to me on the 9th of March the letter copied in his memorial to the President, setting forth the treatment he asserts he had received whilst in the hands of the police authorities, and claiming the protection of his government, which letter did not reach this office.

On the 20th of April I addressed the following letter to General Larcum, the under-secretary for Ireland, on behalf of the then imprisoned American citizens, both native-born and naturalized, accompanied with a list of the prisoners, among whom the name of Mr. P. J. Condon appears :

UNITED STATES CONSULATE.
Dublin, April 20, 1866.

SIR: It is with much reluctance I again address you in reference to the numerous citizens of the United States confined in the jails of Dublin and elsewhere, under the *habeas corpus* suspension act, but my duty compels me to request the attention of the executive to each individual case, and to furnish you with the names of the several American citizens who have applied to me on the subject. I further beg leave to draw your attention to the following extract from your despatch of the 20th of February, as follows :

"His excellency has already given directions for an investigation into the cases of all subjects or citizens of foreign states who have been arrested, with a view to their liberation, if the circumstances render it possible."

If not asking too much, I would be glad to learn the result, if any, of the inquiry so ordered by his excellency.

I have the honor to be, sir, your obedient servant,

WM. B. WEST, *Consul.*

Major General Sir THOMAS A. LARCOM, K. C. B.,
Under Secretary, Dublin Castle.

On the 21st of April I wrote to Mr. Condon, informing him of my application to the Irish executive on his behalf, and on the 28th I again wrote to acquaint him with the result of my application to the Irish government, as follows :

UNITED STATES CONSULATE,
Dublin, April 28, 1866.

SIR: Referring to my note to you of the 21st instant, I much regret to have to inform you that the reply of his excellency the lord lieutenant is decidedly unfavorable to the recognition by him of your claim to be a citizen of the United States, but I shall be most happy still to continue to do whatever is in my power to assist you.

Yet inasmuch as there may be a long delay in the settlement of this question of allegiance, should the Irish executive be disposed to liberate you conditionally at an early day, it will be for you to consider whether it be not expedient for you to accept the terms that might be offered: and

I am, yours, very respectfully,

WM. B. WEST, *Consul.*

MR. PATRICK J. CONDON,
Mount Joy Prison.

To which letter I received the reply of the 30th April, contained in his memorial to the President, as follows:

MOUNT JOY PRISON, April 30, 1866.

DEAR SIR: Yours of the 21st came duly to hand, as also your note of the 28th instant, from which I for the first time learn that the Irish executive of the British government does not recognize my claim of United States citizenship.

As this question, I have no doubt, of allegiance, will cause a dispute between both governments, I, sir, will abide the issue, well believing that my own government will take a bold and dignified stand on this important question.

No conditions of release have been as yet offered me; and if there should, it will be useless to require any conditions short of allowing me to be the free agent of my own actions. I shall patiently await your further official communications.

I am, very truly, yours,

PATRICK J. CONDON.

WILLIAM B. WEST, Esq.,
United States Consulate Office, Dublin.

On the 9th of May I wrote to Mr. Condon the following letter:

UNITED STATES CONSULATE,
Dublin, May 9, 1866.

DEAR SIR: In reply to yours of the 30th ultimo, which great press prevented my earlier attention to, all I can say further on the subject is to refer you to my last note of the 28th ultimo, which I conceive to be applicable to your case; and be assured I shall still continue to use my best exertions for your interest, as far as in my power.

Yours, very truly,

WM. B. WEST, *Consul.*

MR. PATRICK J. CONDON,
Mount Joy Prison.

On the 8th of June I addressed a further letter to Mr. Condon, of which the following is a copy, and received the reply thereto set forth in his memorial:

UNITED STATES CONSULATE,
Dublin, June 8, 1866.

DEAR SIR: It is now nearly three months since I first suggested to you the necessity of your procuring a certificate of your naturalization as a citizen of the United States, and felt surprised that you have not as yet furnished me with same; and inasmuch as it is impossible for me to make a satisfactory application to this government on behalf of any prisoner for whom I cannot produce proof of naturalization. I think it right, therefore, to again draw your attention to the matter, and to express the hope that you will be enabled to supply the necessary evidence without much further delay.

Believe me to remain, yours very truly,

WM. B. WEST, *Consul.*

MR. PATRICK J. CONDON,
Mount Joy Prison.

On the 16th of June I again wrote to Mr. Condon as follows:

UNITED STATES CONSULATE,
Dublin, June 16, 1866.

SIR: I have to acknowledge the receipt of your letter of the 10th instant, and to inform you that no other evidence will supply the want of your naturalization certificate, which you can send me when in your power to do so. I could not have received the letter you allude to, as I cannot find it.

I am, sir, your obedient servant,

WM. B. WEST, *Consul.*

MR. PATRICK J. CONDON,
Mount Joy Prison.

And on the 26th of June Mr. Condon enclosed me his certificate of naturalization, with the note copied in his memorial, to which I replied as follows :

UNITED STATES CONSULATE,
Dublin, June 28, 1866.

SIR: I have to acknowledge the receipt of your letter of the 26th instant, enclosing your certificate of naturalization, and I have to inform you that no further evidence of that fact is necessary.

I remain, yours, very truly,

WM. B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison.

On the receipt of his naturalization paper, I immediately wrote to General Larcom the following note :

UNITED STATES CONSULATE,
Dublin, June 28, 1866.

SIR: May I request that you will be good enough to invite the attention of his excellency the lord lieutenant to the case of Mr. Patrick J. Condon, confined in Mount Joy prison under the *habeas corpus* suspension act, whose certificate of naturalization is in my possession, and would express the hope that it may receive the favorable consideration of his excellency.

I have the honor to be, sir, your obedient servant,

WM. B. WEST, *Consul.*

Major General Sir THOMAS A. LARCOM, K. C. B.,
Under Secretary, Dublin Castle.

To which I received the subjoined reply :

DUBLIN CASTLE, *July 3, 1866.*

SIR: With reference to your letter of the 25th ultimo, on behalf of Patrick J. Condon, now confined in Mount Joy convict prison under the *habeas corpus* suspension act, I am directed by the lord lieutenant to acquaint you that although there can be no doubt that this prisoner is seriously implicated in the Fenian conspiracy, yet considering the delicate state of his health, and that he has been in prison four months, his excellency has felt justified in directing his release on condition that he returns direct from this country to the United States.

I am, sir, your obedient servant,

THOMAS A. LARCOM.

W. B. WEST, Esq.,
United States Consul, Dublin.

The next day I wrote Mr. Condon as follows :

UNITED STATES CONSULATE,
Dublin, July 4, 1866.

SIR: I am happy to inform you that his excellency the lord lieutenant has been pleased to order your liberation on condition that you return direct to the United States.

In haste, yours obediently,

WM. B. WEST, *Consul.*

Mr. PATRICK J. CONDON,
Mount Joy Prison.

In reply to which I received from Mr. Condon the letter of the 10th of July, contained in his memorial, in which he refuses to accept his release on the conditions offered, and requests me to inform him if the terms of his release were accepted for him by the United States government.

On the 12th July I replied to Mr. Condon's letter in the following terms :

UNITED STATES CONSULATE,
Dublin, July 12, 1866.

SIR: I beg to acknowledge the receipt of your letter of the 10th instant, received by last night's post, and in reply inform you that my letter of the 4th instant was intended merely as an official notice to you of your liberation, and the conditions thereof, so far as I was informed by this government. In reply to your question if the terms of your release, that you should be escorted to the ship by police, which I learned for the first time from your letter, are accepted for you by the United States government, I have to say that I have received no authority to accept or reject any conditions that this government may think necessary to

impose as the condition of your release, and am in no way responsible for the action of the Irish executive in relation to such conditions, which it will be entirely for you to consider the expediency of accepting or not.

I have, as you requested, forwarded a copy of your letter to Mr. Adams.

I am, sir, your obedient servant,

WM. B. WEST, *Consul*.

MR. PATRICK J. CONDON,
Mount Joy Prison.

On the 14th of July I wrote the letter quoted by Mr. Condon, expressing my regret that the authorities should have thought so unfavorably of his case as to impose conditions on his release which were objectionable to him, with an assurance that I would continue my services on his behalf whenever an opportunity offered for doing so.

I would respectfully call attention to the fact that I did not receive the evidence of Mr. Condon's citizenship until the 28th of June, and being then, and not till then, authorized to make an application to the Irish government for his discharge, I did so on the same day, and on the 4th of July received the letter of Sir Thomas Larcom, consenting to his conditional release, a copy of which "order for discharge," (marked B,) furnished to me on the 16th of November, is appended hereto.

On the 17th of July Mr. Condon accepted the conditions offered, as appears by a copy signed by him (marked C) annexed hereto, and immediately returned to the United States.

With reference to Mr. Condon's complaint of ill-treatment, I beg leave to append a copy of the report of the inspector general of government prisons, with a schedule of the dietary of Mount Joy prison, for the information of his excellency the President.

The foregoing correspondence and statement of facts, in reply to the memorial of Mr. Condon, are now respectfully submitted to his excellency the President, who, it is hoped, will, from its perusal, be led to the conclusion that the serious charges made by Mr. Condon have been disproved, and, also, that Mr. Condon's interests were not neglected, inasmuch as the order for his release was granted by the lord lieutenant within one week after I had obtained the evidence of his citizenship.

WM. B. WEST.

UNITED STATES CONSULATE,
Dublin, November 17, 1866.

A.

Mount Joy Male Convict Prison.—Treatment of untried prisoners.

DIET.

Four days of week: Breakfast, three-quarters of a pound of bread and one pint of coffee; dinner, one-half pound beef, one pint soup, and two pounds potatoes; supper, three-quarters of a pound of bread and three-quarters of a pint of new milk.

Three days of week: Breakfast, one quart stirabout, a quarter of a pound of bread, and three-quarters of a pint of new milk; dinner, three-quarters of a pound of bread and one pint of new milk; supper, three-quarters of a pound of bread and three quarters of a pint of new milk.

DAILY ROUTINE.

Rise in the morning at six o'clock; breakfast from nine to ten o'clock; exercise two hours daily, one hour in the morning and one at mid-day; dinner from two to three o'clock; books supplied; also paper and ink for writing letters; employment, none; supper from half-past five to six o'clock; to bed at half-past eight o'clock p. m.

Divine service in chapel on Sundays and Wednesdays, from eight to nine o'clock a. m.

Prisoners ordered to smoke or chew tobacco by medical officer are supplied with it, as also wize, porter, or other articles coming under the head of medical comforts. Extra exercise is allowed when ordered by medical officer.

Books not of a political character are admitted, and paper, pens, ink, and postage stamps are supplied free.

Prisoners who feed themselves may have any diet they please from outside, and may have one pint of beer or porter.

A prisoner may receive a visit, not exceeding twenty minutes in length, from a father, mother, wife, child, brother, sister, uncle, or aunt. A prisoner may receive one visit each week day, but the same person cannot repeat a visit until after seven days.

Legal advisers or consuls are admitted, and see the prisoner to whom they come in his cell, in sight of an officer, but standing at such a distance as not to hear what they say.

B.

Order for discharge, on condition of leaving Ireland for America.

DUBLIN CASTLE, July 3, 1866.

SIR: I am directed by the lord lieutenant to convey to you his excellency's order that Patrick Joseph Condon, 32 Harold Cross, now in your custody on suspicion of being concerned in treasonable practices, be discharged, on condition of his forthwith leaving Ireland for America, and being accompanied to the vessel by the police. You will, therefore, fix a time for the departure of this prisoner from the jail in the custody of the police, and release him on the condition mentioned, at the same time giving him expressly to understand that if he is again found in Ireland he will be rearrested.

I am, sir, your obedient servant,

THOMAS A. LARCOM.

The GOVERNOR of Mount Joy Convict Prison.

C.

MOUNT JOY MALE CONVICT PRISON, July 17, 1866.

I, Patrick Joseph Condon, accept my discharge under the warrant of his excellency the lord lieutenant, and on the expressed condition that I leave Ireland for America forthwith, and that I fully understand that if I am found again in Ireland I shall be rearrested.

P. J. CONDON.

Dated this 17th July, 1866.

Witness:

JOHN WHELAN.

GOVERNMENT PRISON'S OFFICE,

Dublin Cas'le, November 15, 1866.

DEAR SIR: On the 4th of July last, while the untried prisoners confined at Mount Joy prison were at exercise, P. J. Condon called upon them to give three cheers for the American independence. A large number of the prisoners did cheer and throw up their hats, and so great was the noise and confusion created that the military picquet and all the available prison officers turned out, believing that some outbreak had taken place. The cheering was confined to the party of prisoners with whom Condon was then being exercised, the greater part of whom were Irish.

For having created this disturbance Condon was reprimanded, when he stated that, since the time of his becoming an American citizen, he had always celebrated the day of independence. He was told that the way to celebrate it was not by breach of prison rules and getting others into trouble; and for the breach of rule in creating disturbance, he was ordered to be placed upon bread and water diet for three days, and exercised apart from other prisoners for a month. As he was under medical treatment the bread and water was not then or at any time given to him, nor was he ever placed on bread and water. He had his full allowance of exercise, and took it with three or four other untried prisoners who were separated from the great body of that class for a period, in consequence of having persisted in breach of the prison rule. P. J. Condon was not pun-

ished for having called for cheers for American independence ; he was punished, or rather sentenced to be punished, for having created a disturbance at exercise, and he would have been equally punished or sentenced if he had cheered for Queen Victoria, or had whistled or had sung, or had said his prayers aloud, or had done anything causing or likely to cause disturbance.

Herewith is attached (marked A) a copy of the dietary and routine for untried prisoners, the class to which the prisoner belonged.

With regard to Condon's discharge, an exact copy (marked B) is herewith attached. He applied to be allowed to go to Scotland previous to sailing for America, but this would not be permitted, and on the 17th of July he accepted the order for discharge, as will appear by the copy attached, (marked C.) He left Mount Joy prison en route for America under the conditions in the printed form (B) on the 17th July.

I am, dear sir, very truly yours,

PATRICK JOSEPH MURRAY.

W. B WEST, Esq.

Mr. Adams to Mr. Seward.

No. 1287.]

LEGATION OF THE UNITED STATES,
London, December 7, 1866.

SIR: The uneasiness in Ireland occasioned by the declarations made in America, and the announcement of the subsequent departure of Stephens, with the avowed intention of heading an insurrection, has increased to such a degree as to put a stop to many of the operations of business. Arrests are made of suspected individuals in all directions ; new regiments of troops are sent over from this kingdom, and all the apparatus of war put into requisition in expectation of an outbreak. The true grounds for this alarm do not appear in any distinct form to the general public. Neither have the examinations of the arrested parties thus far elicited any material evidence to incriminate them. Yet the feelings of the army and the loyal classes are becoming so much excited that if any rising should be attempted, I much fear it will not be treated with the same lenity that has thus far prevailed. There is yet existing the old Orange hatred, which will need only some pretext to break out with its ancient fury. I trust that the precautions taken may be sufficient to prevent any feeble demonstration, that might only serve to develop this ferocity without doing good to any one.

As yet I do not learn that any of the persons arrested claim to be citizens of the United States, with one exception, that of James Donnelly, who has been liberated on a representation made in his favor by Mr. West.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WM. H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Seward to Mr. Adams.

No. 1886½.]

DEPARTMENT OF STATE,
Washington, December 11, 1866.

SIR: I have to acknowledge the receipt of Mr. Moran's despatch, No. 20, of the 2d of November, and also your No. 1276 of the 23d of the same month, both relating to the charges preferred against Mr. West, our consul at Dublin,

by George Archdeacon and Patrick J. Condon, who were arrested in Ireland on the charge of complicity in the late Fenian movement.

You are authorized to inform Mr. West that the replies made by him to the accusations, and which accompanied your 1276, are entirely satisfactory.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 1905]

DEPARTMENT OF STATE,

Washington, January 11, 1867.

SIR: I enclose a copy of a communication of the 8th of December, addressed to the President by Kathleen M. Meany, in behalf of her father, who appears to have been arrested in Liverpool, probably on the ground of alleged complicity in recent political disturbances in Great Britain. I will thank you to take such steps in the matter as in your judgment may seem proper.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

LIVERPOOL, *December 8, 1866.*

SIR: Poor papa came to England, to see his family, and the British authorities have put him in prison and the British press accuse him of many things of which he is innocent. Some time ago they accused him of having deserted his family. Papa never deserted his family; he would not desert any one. He has always been most kind and loving to us all. He has no worldly sense, but his heart is so merciful and forgiving that he would give his last cent, did they need it, to the worst of his unprovoked enemies. Mamma is ill from grief. Wishing to remove all this misery, I write to ask you in the name of our dear heavenly Father to ask the British authorities to release poor papa.

Begging that you will kindly excuse this liberty, I remain, sir, with the most profound respect, yours, &c.,

KATHLEEN M. MEANY.

President JOHNSON.

Mr. Seward to Mr. Adams.

No. 1910.]

DEPARTMENT OF STATE,

Washington, January 15, 1867.

SIR: The honorable Godlove S. Orth, of the House of Representatives, has brought to the notice of this department the case of Captain Charles Underwood O'Connell, a citizen of the United States, who was arrested in September, 1865, on board the steamer City of New York, at Queenstown, on a charge of complicity with the Fenian movement. In December following he was placed on trial at Cork, convicted for having on his person some Fenian papers, and sentenced to ten years penal servitude in the quarries at Portland, England. It appears that his clothing, arms, private family papers and his commission as captain in the United States army, were taken from him by the police authorities, in whose possession they are still supposed to remain.

I will thank you, in making the case known to her Majesty's government, to

use your good offices in behalf of Captain O'Connell, with a view either to effect his release or to obtain a mitigation of the sentence he is now undergoing.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. O'Connell to Mr. Seward.

LA FAYETTE, INDIANA, November 10, 1866.

HONORED SIR: I most respectfully beg leave to state for your information that my son, Captain Charles Underwood O'Connell, a citizen of the United States, and who voted for Mr. Lincoln, was arrested in September, 1865, tried at Cork the following December, and convicted by a packed jury for having on his person some Fenian papers, and then sentenced to ten years' penal servitude, the galling and heartrending horrors of which he is now undergoing as a political prisoner at Portland, England, in the quarries, in company with murderers.

Honored sir, at the time of his arrest on board the City of New York, in the harbor of Queenstown, Cork, his military clothes, arms, private family papers, as also his commission as captain, signed by the American Secretary of War, were all taken by the police and never since given up. He is the *only* military officer who was convicted, and is still detained, suffering most acutely all sorts of privations and persecution. I further beg to state that Mr. Orth, at the request of a highly respectable and influential supporter of his, says he in July last, as also in September, laid the case of my son before you and never received any reply. As a firm supporter of the President's judicious policy I have apprehensions about this. The great affliction I am suffering in consequence of the *death* of my *poor wife*, and the continued incarceration of my son, will, I confidently trust, plead an excuse for my trespassing on your important and valuable time. Confidently trusting in your great and all-powerful influence to secure the release of my son,

I have the honor to be, honored sir, with the greatest respect, your very humble servant,

JOHN O'CONNELL.

Hon. WILLIAM H. SEWARD,

Secretary of State.

Mr. Orth to Mr. Seward.

HOUSE OF REPRESENTATIVES,

Washington, D. C., January 14, 1867.

DEAR SIR: I enclose you a letter from Mr. O'Connell, one of my constituents, in reference to the imprisonment of his son, Charles Underwood O'Connell, formerly a captain in our army, and a citizen of the United States, now imprisoned in Great Britain on charge of complicity with the Fenian movement. Also a letter from honorable George Clifton, governor of Portland prison, &c.

I desire to submit these letters to your department, with the suggestion that probably the friendly interposition of our government in Captain O'Connell's behalf might result in restoring to his family a gallant soldier of the republic, who may have been guilty of an indiscretion against the government of Great Britain, or if of crime, that it is already sufficiently expiated.

Respectfully,

GODLOVE S. ORTH.

Hon. W. H. SEWARD, *Secretary of State.*

Mr. O'Connell to Mr. Orth.

LAFAYETTE, INDIANA, *January 5, 1867.*

HON. SIR: Enclosed you have the governor's letter you expressed a wish to see. I also send a newspaper in which Mr. Pope Hennessy, a member of the English Parliament, alludes to the sufferings and treatment those convicted for political offences are receiving.

May the great Lord bless you—and take the earliest opportunity of seeing Mr. Seward, as my poor son cannot much longer exist, under such cruel and merciless treatment. Regretting much being so very troublesome, and hoping to hear from you after seeing Mr. Seward, I have the honor to be, honorable sir, with great respect, always, your inflexible supporter,

JOHN O'CONNELL.

GODLOVE S. ORTH, Esq., M. C.

Governor Clifton to Mr. Scullin.

GOVERNOR'S OFFICE, PORTLAND PRISON,
Weymouth, England, November 7, 1866.

SIR: Prisoner 5,368, Charles Underwood O'Connell, desires me to communicate with you, and inform you that he is much troubled at not hearing from his family since he left the United States. He would feel more at ease were his anxiety respecting them relieved; and wants to hear whether all are alive and in good health.

He entreats his friends not to fret, or by any means trouble about him—but to remember him in their prayers.

He sends his love to his father, brother-in-law Mr. Scullin, his sisters Margaret, Anna, and Kate, his brothers John and Morgan, and hopes the latter two boys study to improve their minds in their leisure hours. He is quite well.

I am, sir, your obedient servant,

GEORGE CLIFTON.

Mr. TITUS SCULLIN.

Care of Miss O'Connell, Lake House, Lafayette, Indiana, United States of America.

Mr. Adams to Mr. Seward.

No. 1309.]

LEGATION OF THE UNITED STATES,
London, January 25, 1867.

SIR: In regard to the subject of your despatch No. 1905, of the 11th instant, and the letter enclosed with it, I have only to observe that it appears from the statements made in the newspapers that Mr. Meany was charged before one of the police magistrates of London, on the 31st of July, 1862, with an attempt to obtain money under false pretences. And although discharged it was not until after that date that he appears to have emigrated to America. Hence it must be presumed that he cannot be a naturalized citizen of the United States. Mr. Meany was arrested in the streets of London and taken to Ireland, on the ground of complicity with the designs of Mr. Stephens and his associates in that country and the United States. So far as the details of his examination have been

reported in the newspapers, the evidence adduced to prove the charge seemed singularly weak. I will communicate further with Mr. West, the acting consul at Dublin on the subject, and report to you at a future time, whether anything can be done to relieve him.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1316.]

LEGATION OF THE UNITED STATES,

London, February 6, 1867.

SIR: In regard to the subject of your despatch No. 1910, of the 5th of January, the case of Charles Underwood O'Connell, now serving out his sentence in Portland prison for complicity with the Fenian conspiracy, I have carefully examined all the papers connected with it that were originally furnished to this legation by the consul at Dublin. These seem to prove very distinctly the offence that was charged upon him, and upon which he was tried and convicted. It can scarcely be doubted that he was the bearer of letters from and to parties deeply engaged in the plot, the contents of which were well known to him at the time of his arrest. They also disclose one fact which seems to be rather embarrassing in any effort to intercede for him. This is that he nowhere seems to have claimed to be a citizen of the United States; but, on the contrary, he repeatedly declares himself an Irishman, and even boasts of it after the arrest.

Nevertheless I propose to present the matter for the consideration of Lord Stanley on the first opportunity, which I shall seek at once. The panic which put an end for the time to any prospect of lenient measures towards the prisoners is rapidly passing away. The Queen's speech announces that no further extension of the extraordinary powers vested in the government by Parliament will be solicited, so that the administration of the law will resume its wonted course in Ireland in a few months. This will tend to simplify our relations with the government on this delicate question of citizenship. I have not yet received a report of a single new case springing from all the late arrests.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1323.]

LEGATION OF THE UNITED STATES,

London, February 19, 1867.

SIR: In connection with your despatch, No. 1910, of the 15th January, and my No. 1316, of the 6th instant, I have now the honor to report that at my last interview with Lord Stanley I made a representation in behalf of Captain O'Connell. His lordship took a note of the case, and remarked that as all danger from the Fenian organization seemed to be over, it was the desire of the government gradually to get rid of the offenders on lenient terms. I inferred from his language that the prospect of O'Connell's release before a great while

would be fair; but since that time the adventure at Chester, combined with the outbreak at Killarney, may so far change the temper of the ministry as to postpone the execution of their intentions.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1334.]

LEGATION OF THE UNITED STATES,

London, March 8, 1867.

SIR: There has been this week another and a more general attempt at insurrection in Ireland, without, however, being thus far attended with better success. The government seems this time to have been sufficiently apprised of it to make the necessary preparations for defence; but the effect on the body of the property-holders, especially in the country, has been to inspire greater alarm than ever, and to a corresponding extent to paralyze the ordinary movements of industry and trade. It is impossible to disguise the fact that the disaffection which prompts these outbreaks is very general among the poorer classes of the population, at least in the south, the centre, and the west of the island.

The newspapers contain frequent allusions to persons found among the insurgents, alleged to be Americans or American Irish; but as yet Mr. West has not reported to me more than four or five cases of arrest in which his interposition has been solicited. Of course, whenever such persons are taken with arms in their hands, there is nothing to be urged in their behalf as matter of right. On the other hand, when there is reason to believe that innocent persons have been confounded with the guilty, I have directed Mr. West to continue his services in their behalf.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Washington, D. C.

Mr. Seward to Mr. Adams.

No. 1951.]

DEPARTMENT OF STATE,

Washington, March 25, 1867.

SIR: I transmit a copy of a letter of the 16th instant, addressed to me by Patrick Rogers, esq., and of the papers therein referred to in relation to the case of his son, John H. Rogers, who it appears is a prisoner at Mount Joy prison, at or near Dublin.

You will, at your earliest convenience, submit these papers to her Britannic Majesty's government, inquire into the matter, and ask for the release or early trial of the prisoner, as the case shall warrant.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Rogers to Mr. Seward.

275 GRAND STREET, WILLIAMSBURG, LONG ISLAND,
March 16, 1867.

SIR: I have the honor to transmit herewith copies of the following letters and documents, viz:

1. One from William B. West, United States consul at Dublin, Ireland, to my son, John H. Rogers, an American citizen, now imprisoned in Mount Joy prison, at or near Dublin, Ireland.

2. One from my son, John H. Rogers, to William B. West, consul, &c., in reply to the above.

3. One from myself, and mailed this day, to Consul William B. West, transmitting seven (7) enclosures, copies of which are sent herewith, and requesting that official to acknowledge their receipt, and to make such demand for his release of those in whose custody my son is imprisoned as the laws of this republic and the honor of our flag demand.

I beg leave further to request of you, in your official capacity, to take such steps to cause my son to be set at liberty as may be proper. I opine that on the papers sent to our consul at Dublin, and with the patriotic co-operation of your department, there will be very little difficulty in securing his immediate discharge.

I am, very respectfully, your obedient servant,

PATRICK ROGERS.

Hon. WILLIAM H. SEWARD,
Secretary of State.

Mr. West to Mr. Rogers.

UNITED STATES CONSULATE,
Dublin, February 22, 1867.

SIR: I have to acknowledge the receipt of your letter of the 19th instant, informing me that you were arrested under the "habeas corpus suspension act," and that you are a native-born citizen of the United States.

I regret to say that I would not be justified in taking any measures for your release on the grounds of your citizenship without having evidence thereof in my possession; so that, in order to avail yourself of my services, it will be necessary that you obtain legal proofs of your birth in the United States.

In writing this, I of course assume that you have been in no way implicated in the Fenian movement.

I am, sir, your obedient servant,

WILLIAM B. WEST,
United States Consul.

Mr. JOHN H. ROGERS,
Mount Joy Prison.

Mr. Rogers to Mr. West.

MOUNT JOY PRISON,
Dublin, February 25, 1867.

SIR: Yours of February 22 came to hand yesterday. With yourself I regret that you will not be justified in taking any measures for my release, on the grounds of citizenship, without having legal proofs of the same, and which will necessarily call for my further imprisonment.

I will write immediately for the document in question and have it transmitted to you.

I have also to request that any money which may be sent to you for my use, you will acquaint me of the fact, as I have instructed my friends to direct it to your care.

Hoping that you will take charge of same and forgive the inconvenience arising therefrom,

I remain your obedient servant,

JOHN H. ROGERS.

HON. WILLIAM B. WEST,
United States Consul, Dublin.

Copies of the foregoing were received by me at Williamsburg, Long Island, on the 12th day of March, A. D. 1867.

P. R.

Mr. Patrick Rogers to Consul West.

WILLIAMSBURG, LONG ISLAND,
275 Grand Street, March 15, 1867.

SIR: In your letter bearing date February 22, 1867, to my son John H. Rogers, now in Mount Joy prison, at or near Dublin, you say that in order to avail himself of your services, it will be necessary that he obtain legal proofs of his birth in the United States.

As legal proofs of the birth and citizenship of John H. Rogers in the United States, I have the honor to transmit herewith the following documents, viz:

1. A duly exemplified copy of my certificate of naturalization in the marine court of the city of New York.

2. A true copy of my original application to said court to become a citizen of the United States, duly certified by the clerk of the court, with the seal of the court attached.

3. The affidavit of Mr. Patrick Bagan, setting forth the birth, baptism, citizenship and parentage of said John H. Rogers, and a certificate of the clerk of the city and county of New York, thereto annexed.

4. My own affidavit setting forth my citizenship, the owning of real estate, which I could not own unless a citizen, or had declared my intention of becoming such; the birth and citizenship of, and the exercise of the elective franchise by, my son John H. Rogers.

5. The affidavit of William I. Bunnell, an inspector of election in the election held in the first district of the fifteenth ward of the city of Brooklyn, November, 1866, setting forth the citizenship, registry of, and exercise of the elective franchise by John H. Rogers thereat.

6. The affidavit of George Pettinger to the same effect, together with a certificate of the clerk of the county of Kings that the officer administering the oaths was authorized to act.

7. A certificate from the clerk of the city of Brooklyn to the effect that the names of said William I. Bunnell and George Pettinger appear as inspectors of said election, and that the name of John H. Rogers is on the poll-list as a voter.

I may be permitted to state that it is scarcely possible to make out a clearer case of American citizenship, under like circumstances, than that developed and proven in the enclosed papers. You will confer a favor by sending to me your acknowledgment of their receipt by you, and by making such demands for his release, of those in whose custody my son is imprisoned, as the laws of this glorious republic and the honor of our flag demand.

I am, very respectfully, your obedient servant,

PATRICK ROGERS.

HON. WILLIAM B. WEST,
United States Consul at Dublin, Ireland.

[First enclosure.]

STATE OF NEW YORK,
City and County of New York, ss :

Be it remembered, that on the eleventh day of April, in the year of our Lord one thousand eight hundred and thirty-nine, Patrick Rogers, at present of the city of New York, appeared in the marine court of the city of New York, (the said court being a court of record, having a common law jurisdiction and a clerk and seal,) and applied to said court to be admitted to become a citizen of the United States of America, pursuant to the directions of the act of Congress of the United States of America, entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;" and also to an act entitled "An act in addition to an act entitled 'An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;'" and also to an act entitled "An act supplementary to the acts heretofore passed on the subject of a uniform rule of naturalization," passed 30th day of July, 1813; and to the act relative to evidence in cases of naturalization, passed 22d March, 1816; and an act in further addition to an act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject, passed May 26, 1824; and an act entitled "An act to amend the acts concerning naturalization," passed May 24, 1828; and the said Patrick Rogers having thereupon produced to the court such evidence, made such declaration and renunciation, and taken such oaths as are by said acts required;

Thereupon, it was ordered by the said court that the said Patrick Rogers be admitted, and he was accordingly admitted by the court, a citizen of the United States of America.

In testimony whereof, the seal of the said court is hereunto affixed this eleventh day of April, in the sixty-third year of the independence of the United States.

Per curiam :

JOHN BARBERIE, *Clerk.*

[Marine court of the city of New York, L. S.]

[Second enclosure.]

Marine court of the city of New York.

STATE OF NEW YORK,
City and County of New York, ss :

Patrick Bagan, being duly sworn, saith that he, this deponent, knows and is well acquainted with Patrick Rogers, and that he, the said Patrick Rogers, has resided within the United States five years at least, and within the State of New York one year at least; and further, that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

PATRICK BAGAN.

Sworn in open court the 11th day of April, 1839.

JOHN BARBERIE, *Clerk.*

I, Patrick Rogers, do declare on oath, before the marine court of the city of New York, that I will support the Constitution of the United States; and that I do absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state; or sovereignty whatever, and particularly to the Queen of the United Kingdom of Great Britain and Ireland, of whom I was before a subject.

his
 PATRICK + ROGERS.
 mark.

Sworn in open court the 11th day of April, 1839.

JOHN BARBERIE, *Clerk.*

I, Lawrence Clancy, clerk of the city of New York, do hereby certify that the above is a true copy of the original on file in said court, and that the said Patrick Rogers was thereupon duly admitted a citizen of the United States.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court this 15th day of March, 1867.

LAWRENCE CLANCY, *Clerk.*

[Marine court of the city of New York, L. S.]

[Third enclosure.]

UNITED STATES OF AMERICA,

State of New York, City and County of New York, ss :

Patrick Bagan, being duly sworn, says that he resides at Locust Grove, in the town of Newtown, county of Queens, and State of New York, and that he well knows John H. Rogers, now imprisoned in Mount Joy prison, at or near Dublin, Ireland; that deponent knows said John H. Rogers from his birth, which took place at the city of New York on the 15th day of March, 1839; and that deponent acted in the capacity of godfather at the baptism of said John H. Rogers, within a few days after his birth as aforesaid; that Patrick Rogers, the father of said John H. Rogers, also well known to deponent, is and has been for upwards of twenty five years a duly naturalized citizen of the United States, and for many years an owner of real estate in the county of Kings, in said State, and a voter; and that said John H. Rogers is, and since the 15th day of March, 1860, has been, a native-born citizen of the United States, and has exercised the elective franchise as such.

PATRICK BAGAN.

Sworn before me this 15th day of March, 1867.

HUGH G. CONNELL, *Commissioner of Deeds.*

STATE OF NEW YORK,

City and County of New York, ss :

I, William C. Connor, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Hugh G. Connell, before whom the annexed deposition was taken, was at the time of taking the same a commissioner of deeds of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said city and county the 15th day of March, 1867.

[New York, L. s.]

WM. C. CONNOR, *Clerk.*

[Fourth enclosure.]

UNITED STATES OF AMERICA,

State of New York, County of Kings, City of Brooklyn, ss :

Patrick Rogers, being duly sworn, says that he resides at No. 275 Grand street, in said city, county, and State; and that he is, and for twenty-seven years has been, a duly naturalized citizen of the United States, and an owner of real estate in said county for fifteen years past; and that he is the father of John H. Rogers, now imprisoned in Mount Joy prison, at or near Dublin, Ireland; and that said John H. Rogers was born in the city of New York on the fifteenth day of March, 1839, and on the fifteenth day of March, 1860, *became, and now is, a citizen of the United States of America*; and that at every election in said city, since the said fifteenth day of March, 1860, the said John H. Rogers exercised the elective franchise by voting thereat, as became his duty as a good and faithful citizen.

PATRICK ROGERS.

Sworn before me, this 13th day of March, 1867.

JOHN M. FLYNN,

Commissioner of Deeds Kings County, City of Brooklyn.

[Fifth enclosure.]

UNITED STATES OF AMERICA,

State of New York, County of Kings, City of Brooklyn, ss :

William I. Bunnell, being duly sworn, says that he resides at No. 241 South First street, in the fifteenth ward of the city of Brooklyn, and that he knows John H. Rogers, now imprisoned in Mount Joy prison, at or near Dublin, Ireland; and that said John H. Rogers was, and is, a citizen of the United States of America, is duly registered as a voter according to law, and voted at the election held in said city in November, A. D. 1866; and that at said election deponent was a citizen and voted and acted in the capacity of inspector, having been thereto duly appointed to receive votes deposited by citizens in the exercise of the elective franchise, and personally received the vote of said John H. Rogers thereat.

WILLIAM I. BUNNELL.

Sworn before me, this 14th day of March, 1867.

JOHN M. FLYNN,

Commissioner of Deeds Kings County, City of Brooklyn.

[Sixth enclosure.]

UNITED STATES OF AMERICA,

State of New York, County of Kings, City of Brooklyn, ss :

George W. Pettinger, being duly sworn, says that he resides at 276 South Second street, in the fifteenth ward of the city of Brooklyn, and that he knows John H. Rogers, now imprisoned in Mount Joy prison, at or near Dublin, Ireland; and that said John H. Rogers was, and is, a citizen of the United States of America, is duly registered as a voter according to law, and voted at the election held in said city November, A. D. 1866; and that at said election deponent was an inspector of election, duly appointed to receive votes deposited by citizens in the exercise of the elective franchise.

GEORGE W. PETTINGER.

Sworn before me, this 14th day of March, 1867.

JOHN M. FLYNN,

*Commissioner of Deeds Kings County, City of Brooklyn.*STATE OF NEW YORK, *County of Kings, ss :*

I, John J. White, clerk of the county of Kings, and clerk of the supreme court of the State of New York in and for the said county, (said court being a court of record,) do hereby certify that John M. Flynn, before whom the annexed deposition was taken, was, at the time of taking the same, a commissioner of deeds in and for the city of Brooklyn, in said county, dwelling in said city, commissioned and sworn and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such commissioner, and verily believe the signature to said deposition is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and court, this 15th day of March, 1867.

[SEAL.]

JOHN J. WHITE, *Clerk.*

[Seventh enclosure.]

CITY CLERK'S OFFICE, *Brooklyn, March 15, 1867.*

I, Henry McCloskey, clerk of the city of Brooklyn, do hereby certify that the names of William I. Bunnell and George W. Pettinger appear on the poll-list of the first district of the fifteenth ward of the city of Brooklyn, now on file in this office, as inspectors of the election held November 6, 1866.

And I further certify that on the said poll-list the name of John H. Rogers, residing at 275 Grand street, Brooklyn, appears as a voter, as having voted the State, assembly, judiciary, city, and ward ballots, respectively, at said election.

[SEAL.]

HENRY McCLOSKEY, *City Clerk.**Mr. Seward to Mr. Adams.*

No. 1952.]

DEPARTMENT OF STATE,

Washington, March 28, 1867.

SIR: I acknowledge the receipt of your despatch of the 8th of March, No. 1,334 in which you give me, briefly, what is evidently very accurate, as it is important, information concerning the recent disturbances in Ireland. I avail myself of that information for the purpose of conferring with you informally and confidentially upon the condition of affairs between this government and that of Great Britain.

I think myself not only entitled to assume, but bound to assume, that a chronic sedition is existing in Ireland; that, as occasion shall offer, the late disturbances are not unlikely to be renewed, especially if there shall be a continued agitation of political questions in Great Britain. I assume it to be possible that somewhere and at some time a seditious party in Ireland may proclaim an organized insurrection with a show of delegated authority from some portions of the Irish

people. Such a proceeding is intensely expected by many citizens of the United States. That expectation excites a profound sympathy among adopted citizens of Irish birth and their descendants. It is equally manifest that the sympathy of the whole American people goes with such movements, for the reason that there is a habitual jealousy of British proximity across our northern border, and especially for the reason that this nation indulges a profound sense that it sustained great injury from the sympathy extended in Great Britain to the rebels during our civil war. The country has hoped and expected that in some way our complaints against Great Britain in that respect would be satisfactorily adjusted. It has been content to wait until now for that consummation.

But there are, on the other hand, important classes of our people whose patience in this respect is becoming exhausted. The House of Representatives, in the first session of the late Congress, with entire unanimity passed a bill to alter our neutrality laws so as to accommodate them to the standard of neutrality which they understood was maintained during our civil war by Great Britain. The Senate did not concur, and so the bill failed. There are, however, unmistakable indications that the sentiments which controlled the action of the House of Representatives are now gaining favor in the other branch of Congress, as well as among the people.

It is to be expected that time will add to the strength of the interest which demands that projected modification of our neutrality laws; because, first, the sense of injury is intensified by the delay of negotiations; and because, secondly, many ship-builders and other merchants of the United States are now earnestly taking part in the question. I give you copies of certain resolutions just now adopted in the House of Representatives bearing upon our relations with Great Britain.

Lord Stanley proposes an arbitration of the Alabama claims, with a preliminary condition that technical definitions shall be first given to the questions to be submitted.

In that form his offer cannot be accepted, because it would permit a belief here that what are deemed just claims, absolutely entitled to redress, might be defeated by forms obstructive of a fair and full examination. On the other hand, what had been offered on our side is as fair and as liberal as Congress or the nation could be expected to sustain.

Time seems to me to have already become an important element in the question of adjustment. If delays are continued, it may perhaps pass beyond the reach of settlement by a friendly correspondence.

While writing this I am not to be understood as insisting that my views in regard to the situation in Great Britain are altogether correct. I may, indeed, entirely misunderstand the situation there. Nor am I unmindful of the critical nature of the political debates which are now occupying the attention of her Majesty's ministers. It is not the President's desire to do anything which would be or would even seem to be unfriendly to Great Britain. At the same time I think it important that the ministry shall understand the increasing delicacy of the question as it stands in the United States. Your excellent judgment will enable you to determine whether any and what part of what I have said can be made known to Lord Stanley, with a hope of good effect. If such a communication in any form shall be expedient, then the selection of the time and manner in which it shall be made is also left to your discretion. Will you take the matter in hand and act in regard to it as shall seem best, giving me at least the result of your reflections.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

IN THE HOUSE OF REPRESENTATIVES,

March 27, 1867.

Mr. Banks, from the Committee on Foreign Affairs, submitted the following which was adopted :

Resolved, That this House extends its sympathy to the people of Ireland and of Candia in all their just efforts to maintain the independence of states, to elevate the people, and to extend and perpetuate the principles of liberty.

JOINT RESOLUTION concerning the payment of claims made by foreign governments against the United States for property destroyed by the armies of the United States.

Be it resolved, &c., &c., That, in the opinion of this Congress, no claim made by other governments, or by citizens or subjects of other governments, for losses of property sustained by such governments, citizens, or subjects, during the recent rebellion, should be recognized or allowed by the executive departments of this government until the same shall have been submitted to Congress, with all the facts relating thereto.

Passed the House of Representatives of the United States March 27, 1867.

JOINT RESOLUTION respecting the proposed confederation of provinces on the northern frontier of the United States.

Be it resolved by the Senate and House of Representatives, &c., &c., That the people of the United States cannot regard the proposed confederation of the provinces on the northern frontier of this country without extreme solicitude. A confederation of states on this continent, extending from ocean to ocean, established without consulting the people of the provinces to be united, and founded upon monarchical principles, cannot be considered otherwise than as in contravention of the traditions and constantly declared principles of this government, endangering its most important interests, and tending to increase and perpetuate embarrassments already existing between the two governments immediately interested.

Passed House of Representatives of the United States March 27, 1867.

Mr. Adams to Mr. Seward.

No. 1350.]

LEGATION OF THE UNITED STATES,

London, April 13, 1867.

SIR: I have to acknowledge the reception of despatches from the department numbered 1946, 1951, 1953, and 1954.

In regard to the subject of your No. 1951, of the 25th of March, I have the honor to report that an application had already been made on behalf of Patrick (John H.) Rogers by Mr. West, the acting consul at Dublin, and I have received from the latter a letter announcing the decision of the authorities at Dublin to release him on condition of his leaving the country. I have not yet been advised of the action of Mr. Rogers upon that condition.

I have the honor to be, sir, your obedient servant.

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1359.]

LEGATION OF THE UNITED STATES,
London, April 30, 1867.

SIR: I have the honor to transmit a printed report of the evidence given in the trial of T. Burke, now going on at Dublin, for treason, by the man who calls himself Godfrey Massey or Patrick Condon. In it appears a statement that the chief command of all the movements connected with the late attempt at insurrection was vested in a person from America who goes under the name of General Cluseret.

This statement seems to render necessary on my part some explanation of what I know of this person. Some time since he called upon me and presented a paper signed by the governor of the State of New York, purporting to be in the nature of a commission to him to make investigations into the systems of military organizations adopted in other countries, with a view to the improvement of the militia of New York. On the strength of this introduction he asked me to procure for him and an assistant named Fariola admission to the chief military depots of this kingdom, and such other information as related to the mode of organization of all its various sorts of force.

Knowing the great liberality with which these applications on my part have always been met by the persons in authority here, I did not hesitate, on the strength of this credential, to take the usual measures to obtain the facilities that he required. I believe that he availed himself of them to a greater or less degree before he became a subject of suspicion and observation by the police.

You may judge of my mortification in being compelled to communicate through the same channel by which these civilities are freely obtained the reason why I had been led into this mistake. I regret it the more that it may induce hesitation hereafter in granting the like courtesy in cases where such information is honestly desired.

Both General Cluseret and his assistant, Fariola, are included in the indictments prepared in Dublin, though I think neither of them has been actually taken.

I feel it my duty to make these statements, not only that you may fully understand what my connection has been with these persons, should any question about it ever arise, but also that a caution may perhaps be given to the governments of the different States as to the character of the agents they may think fit to employ in commissions of this kind abroad.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the Pall Mall Gazette, April 27, 1867.]

THE FENIAN TRIALS.

Yesterday, when Thomas Burke and Patrick Doran had been placed in the dock, the attorney general (Mr. Chatterton) proceeded to open the case. He observed that, as regarded the prisoners, it was unnecessary to say the result of a verdict against them would entail the direst and greatest punishment known to the law. Their crime could not be exaggerated. It was an attempt upon the life of society, and might have been the means of causing a multitude of murders. After the prosecutions at the Special Commission of 1865 there had been a Fenian lull, but only for a short period. In the autumn of 1866 a number of foreigners arrived in this country. In last October it was discussed in America whether Ireland or Canada should be attacked—Burke the prisoner and Colonel Kelly took part in those discussions. In the same month a man came to New York who afterwards played an important part in the conspiracy. He had served in the confederate army and had been made a Fenian

in Texas. This was Patrick Condon, who took the name of Godfrey Massey. Along with Gleeson, Kelly, Halpin, (afterwards charged with the command of the outbreak in Dublin,) James Stephens, and seventeen or eighteen military officers of high standing, he arranged what was subsequently carried out. Reports of an encouraging kind being received from Ireland, the conspirators resolved on a rising early in the present year. In the month of December a number of them sailed for Liverpool. Massey did not leave New York until the 11th of January, when he sailed for Liverpool with £550 to pay the officers of the Fenian army. He at once repaired to London, where Colonel Kelley, O'Beirne, Harbison, and Dominick Mahony were before him. On the 11th of February, in Colonel Kelly's lodgings, in Regent Square, a council was held. Several other meetings occurred there, at which these persons constituted themselves a civil directory, their spheres of operation being Dublin, Belfast, Cork, and other southern districts. When they started ultimately for Ireland they were supplied with £30 each in gold. Burke was sent to Tipperary, Massey came to Dublin, held a meeting of centres, learned that the muster of Dublin Fenians might be counted upon as 18,000 men, for whom there were 3,000 stand of arms of one kind or another. He then went through the country holding meetings and reconnoitering for military purposes, after which he returned to London, saw Kelly, and agreed that the rising should occur on the 5th of March. Massey instantly came back to Dublin, had another meeting of centres at Portobello, in its vicinity, went from thence to Cork to confer with Mahony, who had been placed there, and on the 4th of March, on his return journey from that city, was arrested at the Limerick Junction on special information that had been given to the government. His arrest, said the attorney general, saved the country from being deluged with blood. It was his duty to introduce to the notice of the jury "another very remarkable informer" named Corydon, a lieutenant of Morgan's guerillas during the American war. Corydon was a principal member of the conspiracy, and had the task committed to him of carrying despatches between England and America. It was owing to information communicated by him that the attack on Chester Castle—organized by McCafferty and Flood—was averted; and Massey's arrest was also due to Corydon. The prisoner Doran was a less important person than Burke, but he helped to seize the police at Stepaside, acting under the command of a man named Lennon, and carrying a rifle. Burke, having received the money from Massey, went through Tipperary organizing his forces, stopping at the principal hotels. He collected a band, took arms from farmer's houses, pressed young men into his ranks, and when the Danish fort of Ballyhurst was seized by the military, Burke, who was mounted, slid off his horse and escaped from the fire of two soldiers, but was immediately afterwards arrested, and found to have upon his person a book containing the Fenian oath, a map of the country in which he was operating, and a plan of Dublin Castle. The attorney general having concluded, the first witness was called, a cabinet-maker named Keogh. He had been a Fenian, and one of a "circle" who used to meet on Sunday nights in a coach factory for drilling. Pike-heads were disposed of for two shillings and sixpence. When the meetings were being held one stood at the door playing a concertina. He went out with Brien, the "B" who had enlisted him, to Tallaght. Various batches of Fenians went with him "to see a fight." Nothing was elicited of moment by the cross-examination.

Patrick Condon, or Godfrey Massey, was the next witness called. He is a tall man, of about eight and twenty, with black hair and eyebrows, military appearance, wearing a heavy moustache, and having no whiskers. He was self-possessed, and bore his examination and cross-examination coolly. He had been a colonel in the confederate army; after their surrender a canvasser in a commercial house in New Orleans; he went sometimes in New York by the name of Cleburne; he denied that he had been in the British army, but admitted on cross-examination that he had served as a sergeant in the Land Transport Corps for about eleven months at the close of the Crimean war. As to his name he was very reticent, but on being closely questioned admitted that his father's name was Massey; that he lived in the county of Limerick, and that he himself was known as Godfrey Massey, but was most frequently called, whilst living with his mother, Patrick Condon. He added, to Mr. Butt's questions, that he did not of himself take the name of Patrick Condon until he enlisted in the Land Transport Corps. He distinctly identified Burke as being one of those whom he had met at the Fenian central office, 19 Chatham street, New York. Burke was then known as Colonel Thomas F. Burke; he subsequently met him at Colonel Kelly's lodgings in London, in January last; he (Massey) there handed Burke a sum of money, the precise amount of which he could not recollect, somewhere about £20, and immediately on receiving it Burke said he would start the same night for Ireland. On the same occasion there were present three persons: Harbison, the delegate from Belfast and the northern districts; O'Beirne, the delegate from Dublin; and Mahony, the delegate from Cork and the southern districts. The numerical strength of the Fenians in Cork, as reported to him (Massey) by the several centres convened in a house at the outskirts of the city of Cork, was above 20,000, and the war material consisted of 1,500 stand of arms, the chief portion being pikes. The witness also stated that he went through the country to Mullingar, Castle Bar, Westport, Limerick Junction, and elsewhere for military purposes, and that it was a direction to him from Colonel Kelly that the plan of campaign should be to seize on all the railway centres, such as the Limerick Junction, and if they could not be held by the insurgents to destroy them. He further added that he was ordered to mass or "mobilize" the insurgents at the Limerick

Junction, and there to await the arrival of the commander-in-chief, General Cluseret, who would appoint to the various subordinate district commands. Massey also stated that Colonel Kelly was the deputy of Stephens, and that a guerilla warfare was to be carried on. At the meeting at which the delegates attended an address was drawn up complaining of the wrongs of Ireland, stating that the body of the people would take up arms, and invoking the sympathies and aid of the working men of England. At Colonel Kelly's, at 5 Upper Cresswell street, London, he had also seen General Fariola, a Franco-Italian, and a person named Fuseri.

In a later despatch our correspondent says: "Massey in his cross-examination further deposed that he would not have given information against the Fenians had he not been himself betrayed; that he had no idea of informing until some days after he had been placed in Kilmainham jail; that he then sent for the Crown solicitor, but even after that wavered, and was only induced to complete his informations by the entreaties of his wife. He wished that when he swooned at the Limerick Junction he had never recovered. He met General Cluseret, the intended commander-in-chief of the rising, in London at Colonel Kelly's, but did not know whether General Cluseret had ever been in Ireland."

A telegram received this morning says: "Corydon has stated in evidence that it was he who gave information of the intended attack on Chester Castle, which was arranged the night before at a meeting of American officers in Edgar street, Liverpool. The Fenian leaders, suspecting treachery, countermanded the enterprise."

[Telegram per cable.]

Mr. Seward to Mr. Adams.

No. 1981.]

DEPARTMENT OF STATE,

Washington, May 15, 1867.

SIR: The President requires that in the cases of United States citizens tried or convicted for insurrection or treason in Ireland you protest against any irregular or doubtful conviction, and in all other cases recommended to the clemency of her Majesty's government.

The sanguinary sentences of the court in the cases of Burke, Doran and McCafferty shock the public sense throughout the United States. Executions conforming to them would leave a painful impression in a country where traditional sympathy with the revolution in Ireland is increased by convictions of national injustice, and therefore is now not only profound but almost universal.

Of course this instruction will not be executed if amnesty or clemency render it unnecessary.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 1983.]

DEPARTMENT OF STATE,

Washington, May 17, 1867.

SIR: I have to acknowledge the receipt of your despatch of the 30th of April, No. 1359. Colonel Cluseret is a Frenchman who volunteered and held a commission in our service in the early part of the war. He is understood to be an enthusiastic French republican. I regret the abuse of your confidence committed by him, and through it an apparent abuse of the confidence of her Majesty's government. Care will be taken at a proper time to prevent similar proceedings hereafter, as far as may be in the power of the department; but I think it now advisable to wait until the end of the Fenian trials going on in Ireland.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 1984.]

DEPARTMENT OF STATE,
Washington, May 17, 1867.

SIR: I transmit a letter of the 13th instant from James Rogers, of No. 8 Wall street, New York, and the original depositions which accompanied it, relative to the case of William Jackson, otherwise called John McCafferty, reported to be under sentence of death for high treason in Ireland.

You will make the most effective use of them you can, in using your good offices on behalf of the prisoner to obtain his release or a mitigation of his sentence.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Rogers to Mr. Seward.

LAW OFFICE OF JAMES J. ROGERS,
No. 8 Wall Street, New York City, May 13, 1867.

I beg leave to refer you to my letter of 29th April, ultimo, and to the response of Mr. F. W. Seward, Assistant Secretary, of 5th May, instant, in relation to the case of William Jackson, otherwise called John McCafferty, now imprisoned, and, as would appear by Atlantic cable telegrams of last week, tried and convicted of high treason, in Dublin, Ireland.

I have waited since the reception of the last named letter, in order that I might hear from Sandusky city, Ohio, where the parents of McCafferty reside, and where he was born, before sending the affidavits (originals) which I herewith transmit to you, duly verified before the proper officers, and certified by the clerk of the supreme court of this State. The proofs of birth and citizenship I expect within a few days unless my letters to Sandusky city have miscarried, or unless those proofs have been transmitted to your department directly.

I would request, inasmuch as parties have been sentenced to be executed in Dublin within twelve days from this date, that copies of these affidavits be forwarded to our minister at London, and to our consul at Dublin, that they may be used either in obtaining a modification of the sentence, a new trial, or in any other proceeding you may deem proper in the premises.

I have the honor to be, very respectfully, your obedient servant,

JAMES J. ROGERS, *Attorney, &c.*

HON. WILLIAM H. SEWARD,

Secretary of State.

UNITED STATES OF AMERICA,

State of New York, City and County of New York, ss:

John Kelcher, being duly sworn, says that he resides at No. 50 Norfolk street, in the city of New York, and is employed in the custom department of Devlin & Co., clothiers, doing business at the corner of Grand street and Broadway, in the city of New York, and has been so employed nearly thirteen years; and that deponent well knows one John Devanney, who, as deponent is informed and believes, has recently lodged, filed, or given information against one William Jackson, otherwise, McCafferty, now imprisoned and detained in Kilmainham jail, Ireland, under a charge of high treason; that said Devanney was employed as a watchman in the store of said firm of Devlin & Co., and was frequently in the view of deponent, and had frequent conversations with deponent; and deponent further says that, on the — day of August, in the year 1866, deponent was in company with said John Devanney during a greater part of said day; and that said Devanney placed his hands, with unusual familiarity, on this deponent's clothing and in the neighborhood of deponent's pockets; and

that during the subsequent evening, and about a half an hour after parting with said Devanney, deponent missed the sum of twenty-five dollars, which deponent verily believes said Devanney stole from deponent's pockets; and that immediately thereafter said Devanney evaded and avoided the company and society of deponent, contrary to his usual custom and habit, which had theretofore been to see deponent frequently and intimately every day.

And deponent further says, that the general character of said Devanney is bad; and that deponent, from deponent's own knowledge and from said Devanney's general reputation, would not believe said Devanney under oath.

And deponent further says, that said Devanney was twice discharged from his employment by said firm on account of neglect of duty, and lazy, idle, and vicious habits, and on account of his frequenting brothels and other bad resorts.

JOHN KELCHER.

Sworn before me, this 20th day of April, 1867.

A. LATHEN SMITH,
Notary Public, New York City.

UNITED STATES OF AMERICA,

State of New York, City and County of New York, ss :

Michael Dowd, being duly sworn, doth depose and say, that he resides at No. 116 Mott street, in the city of New York, and is employed as engineer in the clothing-house of Devlin & Co., at the corner of Grand street and Broadway, in the city of New York, and has been employed by said firm nearly twelve years; and that deponent is well acquainted with one John Devanney, who, as deponent is informed and believes, has made, filed, lodged, or given information against one William Jackson, now imprisoned in Kilmainham jail, Dublin, Ireland, on the charge of high treason, and has known said Devanney about eight years; that said Devanney's general character is not that of a pure man; and that said Devanney was in the habit of keeping company with a common prostitute named Mary Ann Richardson, who went by the by-name of "Jessie;" that said Devanney and said prostitute were frequently together; and that deponent has seen said Devanney approach the entrance to a house of ill-fame with said prostitute; and further saith not.

MICHAEL DOWD.

Sworn before me, this 30th day of April, 1867.

A. LATHEN SMITH,
Notary Public, New York City.

UNITED STATES OF AMERICA,

State of New York, City and County of New York, ss :

James P. Hyde, being duly sworn, says that he resides at No. 59 Marion street, in the city of New York, and is by occupation a hydrant maker, and has been engaged therein about eighteen or twenty years; that deponent well knows one John Devanney, who has made, lodged, or filed an alleged information against one William Jackson, otherwise John McCafferty, now imprisoned in Kilmainham jail, at or near Dublin, Ireland, on the charge of high treason; and knows said Devanney's general character; that said Devanney's habits were very bad, he drank frequently, and spent his time in lounging around from place to place; that no person would retain said Devanney in employment on account of his lazy habits; and he, Devanney, was frequently discharged from places in which he had been hired; and deponent further says, that the general reputation of said Devanney for truth and veracity is bad; and that deponent would not believe said Devanney under oath; and that said Devanney is not an honest man, and is and for years past was distrusted by all who knew him.

JAMES P. HYDE.

Sworn before me, this 30th day of August, 1867.

A. LATHEN SMITH,
Notary Public, New York City.

UNITED STATES OF AMERICA,

State of New York, City and County of New York, ss :

Giovanni B. Sicardi, having been duly sworn, says, that he resides at Tremont, in Westchester county, in the State of New York, and is by occupation a wax-figure manufacturer at 135 Wooster street, in said city of New York, and that deponent well knows John Devanney, who, as deponent is informed and believes, has lodged, filed, or made an alleged information against William Jackson, otherwise designated as John McCafferty, now imprisoned in Kilmainham jail, at or near Dublin, Ireland, on the charge of high treason; that

deponent knows said Devanney about eight years, and that said Devanney did not work steadily or constantly more than three years out of the eight years aforesaid; that said Devanney was constantly in the habit of borrowing money and failing to repay the same; had the habit, three or four times a week, of getting beastly drunk, and intoxicated almost constantly during three years; that said Devanney was for a short time employed on the Fifth Avenue railroad, and frequently boasted to deponent that he, said Devanney, had stolen various sums of money collected by him as conductor and intrusted to his care by his employers—some days to the extent of five dollars, and more; and that said Devanney also informed Deponent that he, said Devanney, had been discharged for “knocking down,” viz., stealing the sum of ten dollars collected by him in one day’s work; that on the last occasion when deponent saw said Devanney, said Devanney said to deponent that he, said Devanney, was about to depart for Ireland, and told deponent that he, said Devanney, would do anything for money, and was going to Ireland on the “make,” an expression which designates hirelings of every denomination who have no regular employment at any respectable business; that said Devanney was frequently the associate of common prostitutes and the frequenter of houses of prostitution; and that said Devanney’s general character is bad, and that deponent would not believe said Devanney under oath.

GIOVANNI B. SICARDI.

Sworn before me this 30th day of April, 1867.

A. LATHEN SMITH,
Notary Public, New York City.

STATE OF NEW YORK, *City and County of New York*, ss :

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that A. Lathen Smith, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 14th day of May, 1867.

[SEAL.]

WM. C. CONNER, *Clerk.*

Mr. O'Dwyer to Mr. Seward.

393 EAST BROADWAY,
New York, May 14, 1867.

SIR: I am instructed by a meeting of the citizens held on the 11th instant, to ask your immediate attention to the trial and conviction of two American citizens in Dublin on the alleged charge of high treason.

Captain John McCafferty, one of the prisoners, was arrested on board a vessel in Dublin, and had committed no act against the British law. After undergoing imprisonment, he has been tried and sentenced to be hanged on the 29th instant.

General Thomas F. Burke, the other prisoner, was also convicted and sentenced to the same fate. If he was found with arms in his hands, it was only for self-defence, and to protect himself from being unjustifiably treated as a felon. I am instructed to submit that this matter calls for the immediate intervention of the government. It is notorious that trials in Ireland for alleged political offences are mere mockeries, and that the British authorities can always secure conviction when they consider it is their interest to do so. It has long been the policy of the British government to commit most flagrant acts of injustice. Her violations of the rights of foreigners who incur her enmity is only limited by the intervention of their respective governments. It is well known to you that Ireland is in a state of discontent towards the British government, that in opposition to the will of the people and their inherent rights England assumes to exercise authority over that nation, and is consequently disposed (with the vain hope of making her control secure) to treat with severity all

whom she considers sympathize with the Irish people and who desire to see the republican government maintained there. General Thomas F. Burke has worn the uniform of the United States army, and has through the late war acted as a brave and devoted soldier.

His name is associated with important services rendered, and he is much esteemed by his fellow-citizens of this city.

Captain McCafferty is well known among his fellow-citizens here, and they are much interested on his account.

The United States is too powerful to allow a government conventionally called civilized to treat in a barbarous manner American citizens. The injustice is increased when it is considered that legal forms are carried out to insure a conviction already made certain by the artifices of the authorities. The state of Ireland at present is, I submit, an additional reason for solicitude on the part of this government for our citizens who, as in the present case, have been sentenced to execution.

Permit me then, sir, to hope that the wish of the citizens which I now convey, the service of General Burke, the esteem in which Captain McCafferty is held by his fellow-citizens, and the generous disposition which we are confident actuates you, will result in the immediate intervention of the United States government on behalf of the prisoners. If the triumphs of science serve the ends of commerce, I trust that in this case, also, the Atlantic cable will be used to remind an oppressive power of the greatness of the United States, and that her solicitude for her citizens follows them through the world.

I have the honor to be, sir, your obedient servant,

WALTER J. MEADE O'DWYER.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1369.]

LEGATION OF THE UNITED STATES,

London, May 18, 1867.

SIR: I have to acknowledge the reception of a telegram in cipher, of the 16th instant, which reached me at half past 10 o'clock the same evening. It gives me instructions to act in certain contingencies in behalf of citizens of the United States now under trial or sentence for offences committed in Ireland.

I have not been an inattentive observer of the proceedings in that country, reports of which have been steadily and promptly transmitted to me by Mr. West, the consul at Dublin. But I must candidly admit that as yet I have seen no reasonable ground of objection to them. The trials have thus far been conducted with liberality and fairness, and great latitude has been granted to the able lawyers who have disinterestedly enlisted in the defence of the prisoners. No evidence has yet been furnished to this legation that either Burke or Doran is a citizen of the United States. The former does not appear to be the same person who was arrested last season and liberated on condition of return to America. The penalty of death inflicted upon the latter by the court has already been commuted to imprisonment, and it is generally understood that the former will not be executed. I transmit a copy of the London Times of the 15th instant, containing an article on the subject, which is here considered as written under official suggestion. With regard to the barbarous terms of the sentence as pronounced by the court, they form one of the relics of the habits of a past age which still adhere to the judicial forms of the United Kingdom, without implying any consequent action in that sense at the present day. It is quite

half a century since any similar sentence has been carried into execution. The practice is for the government to remit all the superfluous brutality.

McCafferty's case still hangs upon a decision of the court on points of law reserved during his trial. There is no danger of his being treated with excessive harshness, if I may judge by the compliment paid to him in the court for his "gallant" service as an insurgent during the rebellion in America. He is undoubtedly a native citizen of the United States, but great difficulty has been experienced by me in aiding him, from the fact that he attempted to pass himself off and get interference on his behalf under a different name. I presume he felt conscious of the effect of the not dissimilar deception he undertook last year. He appears to have little sense of the value of truth.

There is another case of a young man by the name of John McClure, who headed an attack upon a police station at Knockadoon, and fought with great fierceness until finally taken, which may terminate in a capital conviction. I shall endeavor to urge an alleviation of the sentence on the ground of his extreme youth.

There have been a few cases of arrest and detention of persons claiming to be citizens of the United States, all of which have been promptly attended to by Mr. West, and in several their liberation procured. James Smith, of Cincinnati, was one of the number, in spite of the fact that he was found here again after having been liberated last year on condition not to return. I believe his is the only instance of that sort. But before he succeeded in getting away, he was arrested a second time on new grounds of complaint, and still remains in prison.

I presume that Mr. West makes such full reports of his correspondence to the department that most of this information is already in your possession. I can only add that I shall continue to do all in my power to carry out what I understand to be your wishes, as they are my own, by sustaining the just claims to protection of citizens of the United States within this realm.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the London Times, May 15, 1867.]

The gallant behavior of the Irish constabulary during the late Fenian attempt at insurrection has just been chronicled in an unpretending little report, which ought to make their prowess as celebrated as if it had been sung by a sacred bard. On a dark and cold morning of early March a number of the police stations in various parts of the country, occupied only by the usual small detachments, were attacked by bands of armed Fenians, brought together in pursuance of no less an object than the dethronement of Queen Victoria, the establishment of an Irish republic, and the division of the lands of the gentry among the victorious soldiers of the revolution. For this purpose long and extensive preparations had been made. A complete republican government—nay, two governments—had been established in New York, with president, secretaries of finance, war, and even marine, with a military organization comprising generals and major generals, colonels and majors, some of these being actually men of military experience who had served in the late war. They had plenty of money; they had the great body of the Irish population of the United States to back them, and no small number of enthusiastic and credulous people in Ireland to believe in them. They chose their time; they smuggled in and secreted their arms: their chiefs and messengers came and went pretty much as they pleased, exhibiting, we are bound to say, much enterprise and some degree of skill. When all was ready they began their campaign. Their generals were prudent, if not audacious. They did not attack the regular troops of the hostile power which they desired to drive from Ireland; they cared not for the glory of any gallant exploit against Saxon redcoats; their design was at the outset to win an easy victory over the scattered constabulary—almost to a man Irishmen like themselves—and they hoped, by the alarm which they would spread, to rouse an excitable population. The result is well known, but the details will be better understood by looking at the return which has been published. It will there be seen how miserable and how ludicrous were the attempts of these conspirators, and how completely they were thwarted by the steadiness of a few brave men who knew how to do their duty. The Fenian outbreak has even less of dignity than Mr.

Smith O'Brien's one day's campaign in 1848. Were it not that it was actually attended with loss of life, and that its instigators, though contemptible as rebel leaders, have shown themselves dangerous agitators, we should hardly think it worthy to be treated seriously. It appears from the return that at Castlemartyr, in the county of Cork, the police station was defended successfully by six men, while the "supposed number of insurgents" was four hundred; at Kilmallock, where the attack lasted for several hours, and the Fenians used every effort to subdue their enemy, there were from first to last only fifteen policemen engaged against three hundred. At Enly six were opposed to two hundred or three hundred; but the most extraordinary case is that of Palmerstown, where the "number of constables engaged" was *one*. In this memorable defence sub-constable John Blair by himself repulsed a number of Fenians "not known, the night being dark, but it must have been considerable." Afterwards follows a list of the stations to which parties of police belonged who met and successfully engaged the insurgents in places other than the police stations. The most notable of the adventures here reported occurred at Mallow. Three constables are described as encountering three hundred rebels. It is explained that they accompanied a detachment of the 71st regiment "to represent the civil power when in pursuit of the insurgents." "The military, having their knapsacks on, were unable to proceed as quickly as the constabulary, who arrested three men in advance of the military (about two miles) and brought them prisoners to Bottle Hill, on the 6th of March, 1867." After this we are not surprised to learn that in the neighborhood of Dublin sixteen policemen successfully encountered six hundred rebels, and that at Westgate, in Drogheda, twenty-seven discomfited one thousand.

The conclusion we would draw from these facts is that the Fenian conspiracy has been shown, by its abortive outbreak, and by the indifference with which its suppression is regarded, to be beneath the extreme severity of a wise government. The excuses made for it by a certain class of radicals here and in Ireland will, indeed, find approval with very few men of sense. These Fenian leaders are morally as bad as any traitors that ever suffered death. They have come to this country intent upon murder and pillage; they have infected the most ignorant part of the Irish people with ideas subversive of government, property, and national prosperity; they have in several cases returned to their enterprise after being released by the Irish executive; they have cost Ireland millions by the check to its prosperity they have inflicted. They have actually "levied war," and murder has been committed by one at least of the bands which they called into activity. If it were necessary to give such a warning to future marauders as the infliction on one or more of them of the punishment of death, the government would be fully justified in allowing the law to take its course. But there is reason to believe that the danger is past, the strength of the British government understood even by the most reckless, and the imbecility of the Fenian leaders appreciated by nearly all their dupes. To send these men to penal servitude will be a wiser course than to give their memory the dignity of death in a political cause. A factitious importance attends such a fate which has often lifted into posthumous honor men very commonplace and not very upright. There is enough of sympathy with the Fenian cause among the multitude for them to make a martyr of any one who may die with decent courage, but not enough to gild the unromantic and obscure fate of an ordinary convict. We may urge also that if in Canada, where the whole province was kept in alarm for months, and where there was a real invasion and loss of life, the British government directed the commutation of the sentences, it can hardly be necessary to execute them here. If danger from the conspiracy is to be apprehended, and severity is excusable, it is rather across the Atlantic, where armed Fenians are said to be reckoned by hundreds of thousands, than with us, where they may be troublesome, but can never be formidable.

The Americans, when they interceded with our government for the lives of the Fenians convicted in Canada, did certainly not preach where they were unprepared to practice. Since the conclusion of the war, the North, though severe on the southern community, has given way to no animosities against individuals. No one has been put to death in America for what the North has declared to be treason; very few have been molested if they chose to acquiesce in the restored rule and to take no part in politics. The leniency of the government has, however, been carried to its furthest point by the release on bail of Mr. Jefferson Davis after a captivity of two years. Whether he will ever be brought to trial seems to be still uncertain; but we may almost predict that in any case the punishment inflicted on him will not be extreme. We can see that in the case of America this is the wisest policy, and that it is best not to give renewed rancor to the animosities of the South by any act of severity. A similar forbearance would have its good effects in Ireland also.

Mr. Seward to Mr. Adams.

No. 1990.]

DEPARTMENT OF STATE,

Washington, May 27, 1867.

SIR: With reference to my communications of the 15th instant, No. 1981, and 17th instant, No. 1984, concerning the case of William Jackson, otherwise

called John McCafferty, reported as under sentence of death for alleged high treason in Ireland, I enclose for your information a copy of a letter of the 18th instant, received at this department on the 25th, from James J. Rogers, esq., of New York city.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Rogers to Mr. Seward.

LAW OFFICE OF JAMES J. ROGERS,
No. 10 Wall street, New York, May 18, 1867.

SIR: I have the honor to call your attention to my letter of the 13th instant, the receipt of which you kindly acknowledged on the 15th instant. In that communication I stated that the proofs of the birth and citizenship of William Jackson, otherwise John McCafferty, now or lately imprisoned in Mount Joy prison, at or near Dublin, Ireland, were expected by me from McCafferty's birth-place, Sandusky city, Ohio.

On Thursday of this week I received from Ireland a copy of a newspaper called the "Freeman's Journal," published at Dublin, May 3, 1867, in which, among other reports of the proceedings on the trial of McCafferty, the following appears, viz:

THE FENIAN TRIALS—THE SPECIAL COMMISSION—TRIAL OF CAPTAIN M'CAFFERTY.

At the sitting of the court yesterday morning at ten o'clock the prisoner, John McCafferty, having been placed at the bar, was sworn as to the contents of an affidavit on which to ground a motion to have his trial postponed.

Mr. BUTT then said: My lords, I appear on behalf of the prisoner at the bar to apply to your lordships to postpone this trial, and I do so on the following affidavit: [Counsel then read the affidavit made by the prisoner, from which it appeared that he was a natural born citizen of the United States of America, and that he had been indicted at the last special commission for the county of Cork, and that on that occasion the jury who tried him was composed half of foreigners. For the purposes of that trial he handed to his attorney, who appeared for him at Cork, certain official documents of the republic of the United States authenticating the fact of his having been a natural born citizen of America.] He had applied for those papers, and they had not been found. He now wished for time to obtain those papers for the purpose of showing that he was a natural born citizen of the United States. At the trial in Cork it was admitted by the Crown that the prisoner was a natural born citizen, and of this fact he believed one of their lordships had judicial notice. He [Mr. Butt] need scarcely tell their lordships that it would make a very great difference on his trial to show that he was a natural born citizen of the United States.

The CHIEF JUSTICE. In treason?

Mr. BUTT. Yes, my lord; unless he were found guilty of having committed some overt act in this country he could not be found guilty of high treason.

Mr. Justice FITZGERALD said he believed that was the ground on which he was committed.

Mr. BUTT then asked their lordships to adjourn this trial to the last in the commission, in order that in the mean time an application might be made to the American ambassador in London for the required evidence as to birth.

The ATTORNEY GENERAL said he was quite prepared to relieve his learned friend of any difficulty by admitting for the purposes of this trial, whether the fact was so or not, that the prisoner was an alien and a natural-born citizen of the United States of America.

Mr. BUTT. That, my lords, was the object of this application.

Justice FITZGERALD stated that he was aware that on the trial of the prisoner in Cork it was admitted by the Crown that he was born at the place named.

Mr. Smartt, the deputy clerk of the Crown, having called over the long panel, informed the prisoner that he was now put upon trial for his life on a charge of high treason, and of his right to challenge the jurors.

It is presumed that the admission thus made by the government of Great Britain through their attorney general, and the judicial notice taken of the fact by Justice Fitzgerald, of the court by which McCafferty was about to be tried,

will render any further efforts on his part, or on that of his friends, towards obtaining additional proof of his birth and citizenship in the United States, unnecessary, and that the fact will be accepted by the American government as true.

The case, then, so far as the fact of McCafferty's American citizenship and his right to call upon the American government for protection and redress are concerned, is complete. He therefore makes this demand of the American government, in order that he may be released from imprisonment and permitted to travel throughout the British dominions wheresoever an American citizen may travel by virtue of the law of nations and existing treaties. I feel assured, from your letter of the 15th instant, that his case will receive immediate attention, and I feel assured further that that attention will be commensurate with the high position which you occupy so ably, and commensurate with the proud dignity of American citizenship.

I am, very respectfully, your obedient servant,

JAMES J. ROGERS, *Attorney, &c.*

Hon. WILLIAM H. SEWARD,

Secretary of State.

Mr. Adams to Mr. Seward.

No. 1375.]

LEGATION OF THE UNITED STATES,

London. May 28, 1867.

SIR: It was not until Thursday of last week that any doubt was entertained here as to the policy of the government towards the prisoners in Ireland who had been tried and condemned to die for their share in the latest attempt at insurrection. On Friday I received from Dublin a report of the reply of the lord lieutenant to the deputation which waited upon him to urge a remission of the extreme penalty, and it seemed so positive and unequivocal in its refusal that I felt at once the necessity of some action under your special instructions. At the same time the rumor became current here that the question, after deliberate consideration in a full cabinet, had been determined by the vote of a majority in favor of the most rigorous course.

On Friday morning, I received from the legal adviser of John McCafferty, one of the two prisoners, an elaborate opinion, given by Mr. Butt, the distinguished counsel engaged in his defence, pointing out the precise condition of the case, and the remaining doubt of the perfect legality of the conviction which might yet be raised in his behalf by a proceeding in appeal to a higher court. At the same time that Mr. Butt dwelt upon this weak point of the proceedings, he expressed a most unequivocal opinion upon the general fairness of the trial and the impossibility of making any ground of remonstrance against it as in violation of the principles of international law. He thought, however, that if the government were to refuse its assent to a writ of error, that might constitute good cause for intervention on the part of the United States. At the time of writing, however, it is proper to say that Mr. Butt fully believed it was not the intention of the government to exact the last penalty.

Under these circumstances, I took the responsibility to write at once to Mr. West, giving him directions to authorize an application for a writ of error at the expense of the United States, whilst at the same time I addressed a note to Lord Stanley, a copy of which I now have the honor to transmit.

In stating the case of Burke I presume him to be one of the persons of that name who served in the war, and whose name is found in the army list. But the fact is certain that no application for protection has been made by him to the consul; neither is anything positively known of his past history. I learn

to-day that, so far from being an upholder of the government, he was a very determined and obstinate rebel, refusing to take the oath of allegiance at the close of the war.

Be this as it may, the public feeling, both here and in Ireland, became at once so much excited by the news of the decision of the ministers, that strong deputations of members of Parliament and others were immediately organized and set in motion to procure a reconsideration of the decision. The result was a consultation of the cabinet on Saturday, at which it was determined to commute the sentences to imprisonment for life.

A copy of Lord Stanley's note of the 26th instant, in answer to mine, and announcing this result, is herewith transmitted.

Under these circumstances, not deeming it expedient to carry further the legal proceedings previously contemplated, I have given to Mr. West the necessary directions accordingly.

There are still a few cases pending, the most difficult one being that of a youth of 17, by the name of McClure, a native of New York, who has been tried at Cork and pleaded guilty. He has also been sentenced to death, but I take it for granted that after the decision in these cases, no one less aggravated in its circumstances will fare worse.

The difficulty attending any action on my part in the precise circumstances has not been felt to be trifling. On the one hand the unquestionable guilt of the parties, their very doubtful antecedents in our own struggle, and the want of proof of citizenship in the principal instance, impairing the legal force of any interposition whatever; and on the other, the danger of rousing the susceptibilities of the government and people here, already somewhat disturbed by a misconception of the sense of your application in Canada, as well as of implying menace where none was intended, rendered extreme caution necessary not to involve my principal by a misplaced word or a false step.

From the tone of the reply of Lord Stanley, I think I may trust I escaped the gravest part of the responsibility. If in the performance of your injunctions I shall have proved to have met the expectations of the President, I shall then feel myself in every respect fully relieved.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM. H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Lord Stanley.

LEGATION OF THE UNITED STATES,

London, May 25, 1867.

MY LORD: Under instructions from the government which I have the honor to represent, I feel it a most painful duty to present to your lordship some considerations which may possibly weigh with her Majesty's government so far as to induce it to mercy to the prisoners now under sentence of death in Ireland for political offences, at least to a commutation of the fearful penalty.

Disclaiming as I do on the part of my government any intention to interpose as matter of right in these cases, and freely admitting the fairness of the proceedings under which the parties have been condemned, I propose simply to confine myself to a statement of the reasons which prompt my government to venture upon any representation in their behalf.

No evidence has been received at this legation satisfactorily to show that the prisoner Burke has ever been naturalized as a citizen of the United States. It is not therefore on ground of that sort that I proceed. But there is reason to

believe that at the critical period when an insurrection took place among us of a most alarming character, threatening at one moment the total subversion of the established authority of the land, this individual voluntarily came forward to offer his services in the support of the government. They were accepted, and he subsequently did his part bravely in the work which terminated in restoring the legitimate power. Under these circumstances it would seem to be no more than an act of grateful remembrance to offer a plea in his behalf, in mitigation of the penalty upon his present offence.

The case of John McCafferty stands upon wholly different grounds. He is a native citizen of the United States, and there is no doubt that instead of volunteering to the support of the government of the United States in the emergency referred to, he, though belonging to a loyal section of the country, not only enlisted but served throughout the war in the insurgent ranks. Hence it is certain that his conduct rendered him liable to pay the same penalty to the violated law of America that he appears now to have received in Ireland. But on the restoration of peace, the government wishing to inaugurate a new and more humane system of treatment of purely political offences than had heretofore prevailed, decided not to exact the last penalty against notorious offenders, but rather to remit it, and accept a renewal of their allegiance in condonation of the past. This was the case with the prisoner. It is therefore in his behalf as a native citizen of the United States that I have the honor to transmit for your lordship's consideration an opinion of his counsel, Mr. Butt, on the present state of his case. It would appear from this that many questions of law were raised in the course of the trial, upon some of which the judges themselves differed in giving their decision. So far as it may be within the power of this legation, every proper means will be taken that may secure to him the benefit of the fullest privileges granted by the law of the realm. I am constrained to agree in opinion with Mr. Butt that this case does not admit of any right of interposition under the principles of international law; but I cannot help expressing the conviction that in view of the precise condition of things in the United States, the merciful policy there adopted in their domestic affairs is better adapted to allay the bitterness consequent upon a fearful internal strife than the shedding of blood with a view to deter future offenders. It is impossible to disguise to your lordship the fact that the United States now contain a population of Irish extraction so very numerous that what is thought to be a harsh decision of her Majesty's government in these cases will have even a more unfortunate effect on their sympathies than if they were all still remaining subjects to her Majesty's authority. The very peculiar relations into which the two countries are thrown by the fact of the distribution between them, now almost in equal numbers, of the people of that island, by which the peace of the one is affected almost as much as that of the other, may, I trust, justify me for what might otherwise be deemed as passing the proper limits of international courtesy in this representation.

Neither is it perhaps altogether out of place to remind your lordship that in the period of domestic insurrection referred to, persons were found engaged in the rebellion proved to be British subjects, and still more conclusively proved to have been guilty of acts of atrocity and violence far out of the pale of civilized warfare. In one case within my own personal knowledge the offender was condemned to suffer the last penalty inflicted by offended justice, but in consequence of the earnest and urgent representations of British subjects, forwarded in part through the medium of this legation, and partly more directly to my government, the sentence was commuted, and the offender is now expiating his offence in the prisons of the country.

I pray your lordship to accept the assurances of the highest consideration with which I have the honor to be, &c., &c., &c.,

CHARLES FRANCIS ADAMS.

The Right Honorable Lord STANLEY, &c., &c., &c.

Lord Stanley to Mr. Adams.

FOREIGN OFFICE, *May 26, 1867.*

SIR: I have the honor to acknowledge the receipt, at a late hour last night, of your letter of yesterday, interceding for the prisoners Burke and McCafferty, now lying under sentence of death in Ireland for the crime of high treason.

I need scarcely assure you that any representation which you might make under instructions from your government in behalf of persons whose lives were forfeited on account of their participation in even so heinous a crime, would always receive from her Majesty's government the most serious and earnest consideration; and in the present case I am most happy to inform you that, after fully weighing all the circumstances of the case, with the view of deciding whether it were right or possible to remit the extreme penalty of the law in favor of the two prisoners for whom you especially intercede, her Majesty's government came yesterday afternoon to the conclusion that there were grounds on which they might recommend them to the clemency of the Queen, so far as their lives were concerned; and as I cannot doubt that the Queen will gladly accept the advice of her government thus tendered to her Majesty, I feel that I need not hesitate at once to assure you that the sentence of death passed on these prisoners will not be carried into execution.

I may also say that it will be a source of no small satisfaction to her Majesty's government that the clemency shown in this case will be gratifying to the government of the United States, in whose name you have appealed to them for the mitigation of the punishment so justly due to persons who have wantonly engaged in treasonable acts against the peace of the Queen's dominions.

I have the honor to be, &c., &c., &c.,

STANLEY.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

P. S.—*May 27.*—I have delayed sending you this letter in the hope that I might be able to add to it the reply of the Queen to the recommendation, which I inform you had been made on Saturday to her Majesty; and I am now in a position to acquaint you that the Queen has been graciously pleased to comply with the advice of her ministers, and to signify her assent to the sentence of death, passed on the prisoners Burke and McCafferty, being commuted for penal servitude for life.

Mr. Adams to Mr. Seward.

No. 1379.]

LEGATION OF THE UNITED STATES.

London, June 4, 1867.

SIR: I have to acknowledge the reception from the department of despatch No. 1985, of the 20th of May.

It is now tolerably well ascertained that none of the sentences of death pronounced in Ireland will be carried out. Since writing my No. 1357, on the case of McCafferty, I learn from the report of Mr. West that his legal advisers, not satisfied with the commutation of the penalty, are desirous of prosecuting the appeal from the decision of the court, with a view to his liberation, and demur to my refusal to incur any further responsibility for the costs of the process on the part of the United States. I can well understand why it would be very agreeable to throw the onus of expensive litigation upon the government, independently of the moral support incidentally gained to the general cause. But I am always disposed to be chary of the expenditure of the public money, especially in cases where I am called to act without authority. I have, there-

fore, persisted in declining to go further, at least until the matter shall have been fully submitted to your judgment. Any instructions you may think proper to give will, however, be faithfully carried out.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. F. W. Seward to Mr. Adams

No. 1996.]

DEPARTMENT OF STATE,

Washington, June 4, 1867.

SIR: I enclose herewith a copy of a letter of the 24th ultimo, addressed to this department by James A. Hamilton, esq., son of the late Alexander Hamilton, in behalf of John McClure, a prisoner in Ireland, and to whom reference was made in your No. 1369 of the 18th of May.

I will thank you to do what you properly can, with a view to effect the object sought by Mr. Hamilton.

I am, sir, your obedient servant,

F. W. SEWARD,

Acting Secretary.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Hamilton to Mr. Seward.

NEVIS, May 24, 1867.

SIR: John McClure, the son of respectable parents, whom I have long known in this neighborhood, recently on trial in Ireland, has pleaded guilty and thrown himself on the mercy of the government.

He went off as a Fenian without the knowledge of his parents. He is under twenty-one years, served gallantly during the recent rebellion in defence of the United States government. He is a citizen by birth, although his parent is an Irishman naturalized. The father has gone to Cork; the mother is distracted with grief. I am requested to address this letter to you in the hope that you may, not in your official but personal character, exercise an influence, perhaps through the English minister, which will induce a pardon on condition that he will leave Ireland immediately and abjure Fenianism.

I have the honor to be your obedient servant,

JAMES A. HAMILTON.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington.

Mr. Seward to Mr. Adams.

No. 2005.]

DEPARTMENT OF STATE,

Washington, June 20, 1867.

SIR: I have to acknowledge the receipt of your despatch of the 4th instant, No. 1379, in which you inform me that the legal advisers of John McCafferty, not satisfied with the commutation of the death sentence pronounced upon him in Ireland, are desirous of prosecuting an appeal from the decision of the court,

with a view to the liberation of the prisoner, and that you decline to assume any responsibility for expenses incurred thereby until you shall have received instructions from this department.

In reply, you are requested to cause the appeal to be taken. You will draw upon Messrs. Baring Brothers & Company for the necessary funds to pay the expenses consequent thereupon.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1292.]

LEGATION OF THE UNITED STATES,

London, June 22, 1867.

SIR: In connection with the case of John McClure, referred to in despatch No. 1996, of the 4th of June, I have to report that the extreme penalty to which he was condemned has been commuted to imprisonment for life. He is now in prison undergoing that sentence. But inasmuch as he pleaded guilty at the trial, confessed himself to have been deceived into the part he took, and is ready to bind himself to return to America if released, I have reason to believe that so soon as the state of things in Ireland becomes sufficiently settled to permit of it, the authorities will grant his discharge. A movement may be made in his behalf by some persons of influence here on what may be deemed the first favorable opportunity, with which I shall endeavor to co operate.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1401.]

LEGATION OF THE UNITED STATES,

London, July 5, 1867.

SIR: Since the date of my despatch No. 1379, to which your No. 2005 of the 20th of June is in answer, the case of John McCafferty, therein referred to, has somewhat changed its character. The application for a writ of error, which, according to the practice in Ireland, appears to have been addressed to the lord lieutenant, has been replied to by the under-secretary of that officer in a note, stating that, in the opinion of the attorney general, there was no ground for such a writ, hence that it has been refused.

Under these circumstances the counsel for McCafferty have decided to take the course of petition to both houses of Parliament, praying their intervention in his favor. I have the honor to transmit printed copies of the forms of this petition as they have been sent to me by the prisoner's counsel. I further learn that copies have been forwarded to Lord Westbury in one house, and to Sir John Coleridge in the other, with letters, soliciting their aid in the presentation of them. A request has likewise been made to me that I would interfere in aid of these petitions. The only question that arises in my mind, in connection with this state of the case, is as to the extent to which a diplomatic representative may venture to proceed in attempting to influence the purely legislative proceedings of the country to which he is accredited. My general impressions, I confess, are unfavorable to setting an example of such an interference, as

opening up dangers of its application to ourselves with our peculiarly constituted forms of legislation which might, in the progress of time, lead to serious disorders at home.

Bearing in mind, however, your instructions, I shall endeavor to make such verbal representations on the subject to Lord Stanley as may induce the government to withdraw its opposition to the movement. Should any success result from it, I shall then proceed in regard to the suit according to the directions which I have received.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

To the lords spiritual and temporal of the United Kingdom of Great Britain and Ireland, in Parliament assembled :

The humble petition of John McCafferty, of the United States of America, now a prisoner in Mount Joy convict prison, in the city of Dublin, sheweth: That your petitioner in another petition has represented to your lordships a grievance arising out of the unjust denial of the right of appeal; that he also prays your lordships to take into consideration the following circumstances connected with his conviction; that no direct evidence was offered at his trial of any act of hostility to the British government committed by your petitioner in this country, except that of one Corydon, an informer examined on his trial; that the only other evidence consisted of acts done in his own country, for which your petitioner was not accountable to British law, and of circumstances of suspicion affecting him in Ireland and England; that upon such evidence his counsel insisted at the trial that there was no proof sufficient to warrant a conviction, requiring two witnesses to high treason; that the judges who tried the case reserved such questions for the court of criminal appeal; that in such last-mentioned court ten judges out of eleven gave their opinion in favor of upholding the conviction, the remaining judge (Mr. Justice O'Brien) declaring that he had no doubt whatever that the evidence was insufficient to satisfy the statute; that the judges who upheld the conviction all differed on the grounds upon which they did so; several of them thought that there was just a scintilla of evidence to go to the jury. The Lord Chief Baron ruled distinctly that he had not a shadow of doubt in dissenting from the ground upon which the majority of the court decided, but that with great doubt and hesitation he upheld the conviction upon a point which had only been suggested by himself in his judgment; that the result of the judgment of the judges on the appeal is to establish incontestably that in the trial in the court below your petitioner had not the benefit of the statute requiring two witnesses to prove high treason; that, even if your petitioner could dispute the law as laid down in the court of criminal appeal, your petitioner is informed that there is no means of bringing the decision of that court under the review of a superior tribunal; that your petitioner humbly submits that, having regard to the difference of opinion among the judges, the contradictory and conflicting grounds upon which they rested their decision, and especially having regard to the very strong and clear opinion of the Lord Chief Baron, the decision cannot be regarded as satisfactory; that, on the contrary, it is plain that at the trial, in point of fact, the question of your petitioner's guilt was left to the jury upon the testimony of one witness, and that he was really convicted upon the testimony of the informer Corydon alone; that his conviction was against the provisions of the statute of William the Third; that a sentence founded on such a conviction ought not to be carried out; that there is no clear or satisfactory judicial decision establishing, as to the testimony of any two witnesses, that the same was sufficient to convict your petitioner, or that he was convicted by any witnesses proving any act of treason against him independent of the evidence of the informer Corydon.

Your petitioner humbly submits that a reading of the judgments delivered in the court of criminal appeal is sufficient to establish that, in point of fact, as the case was tried, he was convicted on the evidence of Corydon alone, against both the spirit and the letter of the statute.

Your petitioner therefore prays that all the papers and documents connected with the hearing of your petitioner's case in the court of criminal appeal, including the printed opinions of the judges, may be laid before your Lordships' house, and if it shall appear that your petitioner has been convicted upon the testimony of one witness, or that the circumstances are not such as to warrant the carrying out of the sentence, that your lordships may address the Queen to grant to your petitioner a full pardon, on the ground that the legality or propriety of his conviction does not satisfactorily appear.

And your petitioner, as in duty bound, will ever pray.

JOHN McCAFFERTY.

To the right honorable and honorable the knights, burgesses, and commons in Parliament assembled:

The humble petition of John McCafferty, of the United States of America, now a prisoner in Mount Joy convict prison, sheweth: That your petitioner is a natural-born citizen of the United States of America, having been born in Sandusky city, Ohio; that your petitioner was found guilty of high treason at a special commission of the county of Dublin, in the month of May last, and he was thereupon sentenced to death, but that the capital sentence was commuted into the punishment of penal servitude for life: that your petitioner is now undergoing the latter punishment, and that if said punishment be carried out it will inflict upon your petitioner a doom more terrible than death: that your petitioner now humbly approaches your honorable house, because he is advised and believes that he is enduring this punishment under a sentence not warranted by the laws of England, and that he is prevented from testing the legality of that sentence by an arbitrary and unjust denial of the right of appeal; that your petitioner was committed to custody in the county of the city of Dublin on the 23d of February last, under the warrant of the lord lieutenant, issued in pursuance of the statutes 29 Vic., chap. 1, and the 29th and 30th Vic., chap. 119, continuing the said first-mentioned statute; that the said statute, 29th Vic., chap. 1, contains in its first section an express provision that no judge or justice of the peace shall bail or try any person so committed to custody, under the warrant of the lord lieutenant, without orders from her Majesty's privy council; that when your petitioner was tried your petitioner was in custody under a warrant from the lord lieutenant, and that no order was ever made by the privy council authorizing his trial; that the fact of your petitioner being so in custody, under such warrant, was plainly stated in the calendar of prisoners given to the judges at the commencement of the sittings, and that the warrant itself was produced and given in evidence at the trial, and the fact of his being in custody under it was clearly proved; that notwithstanding the said express provision of the said statute, the attorney general put your petitioner on his trial without obtaining any order from the privy council authorizing your petitioner's trial; and the judges proceeded to try your petitioner notwithstanding the notice so given to them in the calendar, and after the fact of your petitioner being in custody under said warrant had been distinctly proved before them; that after the verdict of "guilty" had been returned, and before any sentence was passed upon your petitioner, Mr. Butt, one of her Majesty's counsel in Ireland defending your petitioner, called on the judges not to proceed further with the trial by giving judgment against your petitioner, as no order from the privy council authorizing the trial had been produced to them; but that the judges overruled such objection and sentenced your petitioner to death; that the judges, in overruling such objection, stated that they were bound by the terms of an order of the court of criminal appeal to pass sentence on your petitioner; that the said order was made by the said court of criminal appeal upon questions reserved for the said court, as to the sufficiency and admissibility of evidence given upon your petitioner's trial, and which in no way related to the question of jurisdiction so raised by your petitioner's counsel; that your petitioner has been advised that any order having such effect was wholly beyond the jurisdiction of the court of criminal appeal, and that any such order would be wholly illegal and of no avail, the power of such court being strictly limited to the decision of the questions reserved for them.

Your petitioner sheweth that the said order was drawn up without any opportunity having been given to your petitioner's counsel of seeing or objecting to same, and your petitioner believes that said order was never intended by the judges who sat in the said court of criminal appeal, nor could it in fact, as your petitioner submits, conclude the said judges from entertaining the said objection so made by your petitioner's counsel; that Mr. Justice Fitzgerald, one of the judges at the commission, in overruling the objection so made by your petitioner's counsel, stated that he was bound by the form of the order made by the court of criminal appeal, and that if there had been a mistrial, your petitioner would have another remedy: that the commission court having held themselves bound by the form of such order, your petitioner has had no opportunity whatever of submitting the legality of his trial to any tribunal whatever; that your petitioner, before pleading to the indictment preferred against your petitioner, objected to plead to the said indictment upon the grounds that the provisions of the statutes of the 5th George III, chapter 21, Irish, and the 1st and 2d George IV, chapter 24, had not been complied with, and that your petitioner had not been furnished with a true copy of the whole indictment ten days before his said trial, and your petitioner tendered to the said court a plea for the purpose of raising the said objection upon the record, and praying that he might not be called upon to plead until the said statutes had been complied with, and your petitioner saith that the said judges refused to receive the said plea, contrary, as your petitioner believes, to your petitioner's strict right: that upon the record of your petitioner's conviction it is admitted that two of the grand jurors who found true bills against your petitioner were not sworn upon the Holy Evangelists, or at all previous to the finding of the said bills, and your petitioner saith that one at least of the said jurors was not a person qualified or permitted by law, in serving as a grand juror, to take an affirmation instead of an oath; that your petitioner was defended by Mr. Butt, Q. C., and Mr. Dowse, Q. C., counsel assigned by the court, and that they were aided and assisted by Mr. O'Loughlen and Mr. Molloy, and that these four gentlemen are in their respective positions among the men at the

Irish bar most eminent for knowledge of the criminal law; that these four gentlemen unanimously advised the attorney acting for your petitioner that the matters herein before stated, and the omission by the attorney general to obtain the order of the privy council authorizing the trial, were fatal objections, and made the trial a nullity. And your petitioner was further advised that such objections were proper subjects for a writ of error, and that on a writ of error, error in fact could be assigned, and upon a writ of error to the Queen's Bench, or at all events to the House of Lords, the judgment of the court against your petitioner would be reversed, especially as no superior court would be bound by the illegal order of the court of criminal appeal; that acting on such advice, your petitioner's attorney caused a petition to be presented to the lord lieutenant of Ireland for a writ of error; that after the lapse of some time your petitioner's attorney received a letter from the under-secretary of the lord lieutenant, stating that in the opinion of the attorney general there was no ground for the writ of error; that the petition for the writ of error was accompanied by the certificate of your petitioner's counsel that there were good grounds for such writ of error; that your petitioner submits to your honorable house that the attorney general was the prosecutor in the case, that the question was whether he had made a mistake or blunder in the conduct of the proceedings, and that it is contrary to the first principles of law and justice to permit him to be the absolute and final judge upon such a question; that your petitioner humbly submits to your honorable house that it is impossible to say that a fair question does not exist as to the legality of your petitioner's conviction; that if such fair question exists, it is the right of your petitioner to have same submitted to the proper court of appeal, and that any capricious or unjust denial of such right to a foreigner amounts to a violation of the established principles of international law; that your petitioner, as an American citizen, now humbly claims his right to test the legality of his conviction by an appeal to the highest tribunals of British law, and most respectfully and most earnestly protests against the attempt to shut him out from that appeal; that your petitioner is ready to produce at the bar of your honorable house, or in any other way in which your honorable house may direct, the opinions of eminent British jurists, that the allowance of his appeal is a matter of right; that no possible inconvenience can result to the course of justice by allowing the writ of error; that your petitioner is undergoing his sentence, and must continue to undergo it, unless and until it is reversed by a superior court; that the only practical effect of the writ of error would be to test the legality of the conviction, which if legal would stand.

Under these circumstances your petitioner respectfully but most solemnly protests against the denial of his right of appeal, as a violation of the principles of justice and a breach of the principles of international law. Your petitioner is aware that your honorable house has no power judicially to interfere, but he appeals to your honorable house as her Majesty's commons not to permit this wrong to be committed in the name of the Queen.

Your petitioner, in his own name and in the name of all foreigners, protests against the rule that an Irish attorney general, in a case in which he prosecutes himself, can constitute himself the judge of the propriety of an appeal from the regularity and legality of his own proceedings; and as a citizen of the United States your petitioner humbly claims by the law of nations the benefit of every appeal to which any citizen of this country is entitled.

Your petitioner is informed and believes that although in form the assent of the attorney general is required in this country to every writ of error in treason or felony, yet such assent is never refused when reasonable grounds are shown, and that writs of error in England are commonly issued in cases of the most heinous offenders, and upon grounds much less strong than those existing in the case of your petitioner.

Your petitioner further sheweth that, in England, in order to obtain a writ of error, no petition to the executive is necessary; but that in Ireland a petition to the lord lieutenant is required.

That your petitioner's solicitor was required with the petition to the lord lieutenant to deposit, and did deposit, a sum of fifteen guineas as a fee for the opinion of the attorney general, which sum is retained even when the attorney general refuses the writ: that no such fee is required in England upon an application for the attorney general's fiat: that your petitioner refers to such matters as an illustration of the different manner in which justice is administered in England and Ireland, your petitioner being perfectly persuaded that if he had been tried in England, and the same point had arisen, the allowance of a writ of error would have been a matter of course; that on the occasions of trials of prisoners imprisoned by virtue of the warrant of the lord lieutenant during a temporary suspension of the *habeas corpus* act, the attorney general of the day invariably produced to the judges the order of the privy council authorizing the trial: that your petitioner is now suffering a terrible punishment under a sentence which he is advised is illegal: that he is so advised by lawyers of more experience and reputation as criminal lawyers than the Irish attorney general, and that so long as he is prevented from testing their opinion by an appeal to the highest tribunals of British law, he must ever feel that he is condemned to penal servitude by the arbitrary act of his prosecutor acting as judge in his own cause.

Your petitioner therefore prays that your honorable house may take his case into your consideration, and that if your honorable house shall so think it necessary that the allegations of this his petition may be inquired into at the bar of your honorable house, or before a select committee appointed by your honorable house, or that your honorable house may

be pleased to present an address to her Majesty, the Queen, praying that she may direct that a writ of error may issue at the suit of your petitioner to try the legality of his conviction, or that such other steps may be taken as will enable your petitioner to bring under the review of the proper tribunal the legality of the sentence which he is now undergoing.

And your petitioner, as in duty bound, will ever pray.

JOHN McCAFFERTY.

Mr. Seward to Mr. Adams.

No. 1012.]

DEPARTMENT OF STATE,

Washington, July 5, 1867.

SIR: Your despatch of the 22d of June, No. 1392, concerning the probable disposition of the case of John McClure, a prisoner in Ireland, convicted of complicity in the Fenian disturbances, has been received, and your proposed proceedings and those of other persons of influence on behalf of the prisoner are approved and commended.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 1016.]

DEPARTMENT OF STATE,

Washington, July 9, 1867.

SIR: I enclose a copy of a letter of the 4th instant from D. M. Nagle, esq., accompanied by one from Colonel William J. Nagle, in regard to the arrest and imprisonment of the last named in Ireland.

You will be expected to take such measures as may be practicable for securing the early discharge of Colonel Nagle.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Nagle to Mr. Seward.

284 PACIFIC STREET,

Brooklyn, July 4, 1867.

DEAR SIR: I respectfully beg leave to enclose for your consideration a copy of Colonel William J. Nagle's letter recently addressed to me.

All my children were born in this State—five sons and three daughters.

I remain, very truly, your obedient servant,

D. M. NAGLE.

Hon. WILLIAM H. SEWARD,
Secretary of State.

The following letter from Colonel Nagle to his father will be read with interest. The colonel was an officer in the Union army, and having lost his health in the service, started upon a European tour. In Ireland he was arrested on the charge of being a Fenian:

COUNTY CORK JAIL, *June 14, 1867.*

DEAR FATHER: I was arrested on the 1st of June, in company with Colonel J. Warren, on the bridge crossing the Blackwater from Waterford into Youghal. We were kept in the

Youghal Bridewell until the morning of the 4th, when we were sent to this place, marched through the streets of both places hand-cuffed like felons. We are now held under a warrant from the lord lieutenant of Ireland, and will remain prisoners so long as the fears and purposes of the government may require the suspension of the writ of *habeas corpus*, unless some action is taken by the authorities or government of our country.

We are held under suspicion of being connected with the "Fenian conspiracy," so-called, in this country. No evidence of any kind is shown or charge made, other than "suspicion," which is applied as a general rule to all Americans. I will place my case before the United States minister at London. The correspondence with Mr. Adams, and his communication which may become necessary with the State Department, must consume much time. It would be well for you to take immediate steps to bring my case before the notice of the people, and have the subject brought before Congress at the coming session in July. This is not exclusively an individual case, but becomes a question of right involving the liberty of every American citizen that sets foot on this soil. I ask the government of my country, which I have faithfully served, whose laws I have never violated, to secure to me that liberty which is my birthright, and of which I am now deprived without any cause or plea of justification by an authority I do not recognize—a government to which I owe no allegiance, and whose laws I have in no way infringed upon.

My arrest followed so quick upon my arrival in this country that I had no opportunity to find out any of my relatives whom I intended to visit. My chances of being in Paris this summer are doubtful. I must be content to suffer the penalty of being an American soldier with Irish blood in my veins, so far offending the majesty of British law as to be found upon Irish soil.

WM. J. NAGLE.

Mr. Seward to Mr. Adams.

No. 2017.]

DEPARTMENT OF STATE,

Washington, July 13, 1867.

SIR: I enclose a copy of a letter of the 10th instant, from Mr. Hugh Dunigan, of New York, regarding the arrest and imprisonment of Patrick Kane, in Ireland, charged with being a Fenian.

I will thank you to do what you properly can in behalf of the prisoner.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Dunigan to Mr. Seward.

NEW YORK, July 10, 1867.

DEAR SIR: I write to you, hoping that you will take some action about a young man named Patrick Kane, who left this country to visit friends in Ireland, and was arrested on his arrival in Ireland on the charge of Fenianism. He was arrested on or about the 7th of June, and is in confinement yet, he being a citizen of the United States, and of the city of New York. I hope that you will take some action in his behalf. He has committed no overt act against the British government. He is now confined in Middletown jail, county Cork, Ireland.

Hoping that you will see justice done to American subjects, I remain,

Yours, most respectfully,

HUGH DUNIGAN.

Hon. WILLIAM H. SEWARD,

Secretary of State.

Mr. Seward to Mr. Adams.

No 2031.]

DEPARTMENT OF STATE,
Washington, August 6, 1867.

SIR: Herewith I transmit a copy of a letter, together with its accompaniments, which, on the 26th of July, was addressed to this department by Bernard Dwyer, esq., on behalf of his brother, Owen Dwyer, who has been arrested at Carlisle Pier, England, on a charge of complicity in the Fenian movement in that country.

You will acquaint yourself with the facts of this case, and will demand his release or interpose your good offices in behalf of the accused, as the circumstances shall, in your judgment, warrant.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, &c., &c., &c.

Mr. Dwyer to Mr. Seward.

MEMPHIS, TENN., *July 26, 1867.*

SIR: The Boston Pilot of date June 27, 1867, contains notice of the arrest, as a Fenian, at Carlisle Pier, England, of Owen Dwyer, a citizen of the United States, resident of the State of Tennessee, and that after a preliminary examination had he was remanded. This communication is addressed you to request the immediate interposition of the United States in his behalf.

The said Dwyer has been a citizen of this State, and the United States, for many years past, has never affiliated in manner or form with the late Fenian movement, and in no manner connected therewith, and was, at the time of his arrest, on a visit to relatives in the kingdom of Great Britain.

I would state that said Dwyer removed to this country when a youth, has ever, without intermission, continued to reside here, is a large property holder in this city and State, and has enjoyed all the rights of citizenship, and that his arrest and detention is most unjust and wrongful. I, his brother, therefore request and claim at your hands, as the representative of the government, the aid and protection of the United States in obtaining the release of this citizen.

Hoping that such steps as may be necessary and proper to attain the end desired, and afford the relief prayed for, may be immediately taken by the government,

I remain, very respectfully, your obedient servant,

BERNARD DWYER.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Address all communications to Humes & Paston, Memphis, Tennessee.

We the undersigned, citizens of Memphis, Shelby county and State of Tennessee, certify that we are personally acquainted with Owen Dwyer, and have known him for many years.

We further know that he is a "bona fide" citizen of this State, a large property holder in this city, and has ever enjoyed the rights of citizenship. We further state that said Dwyer is a quiet peaceable citizen, never having taken part in the late national struggle, and that he has never expressed any sympathy for or taken any interest in the late Fenian movement,

to the best of our knowledge and belief, and we have known him well and intimately, as before stated.

W. O. LOFLAND,

Mayor of Memphis.

THOMAS L. POWER, O. P.,

Pastor St. Peter's Church.

MICHAEL D. LILLY, O. P.,

JOHN DWYER.

BERNARD DWYER.

DANIEL SLENLIN.

ROBERT CARSON.

P. O'NEIL.

THOS. KELLY.

M. GARVIN.

G. W. TAYLOR.

M. MAGEVNEY, Jr.

MICHAEL MAGEVNEY.

H. CLOTHS.

HENRY E. GREEN,

Prest. St. Geo. Benev't Ass'n of Tenn.

JOHN DAVIS,

Member St. Geo. B. A. United States.

JACOB STEINKUHL.

MEMPHIS, July 26, 1867.

This is to certify that we have known Owen Dwyer for many years; have been his counsel and attorney in all matters requiring our services; that his visit to England was for no other purpose than as above stated. Moreover, that he has ever claimed to be a citizen of the State where he has acquired a large property, and that he is a peaceable, quiet citizen, abstaining from all political controversies and disputes.

HUMES & PASTON,

Attorneys at Law.

UNITED STATES OF AMERICA,

State of Tennessee, District of West Tennessee, City of Memphis:

Be it remembered that on this 26th day of July, A. D. 1867, before me, Fearn Penn, United States commissioner for the district of West Tennessee, duly appointed under the laws of the United States to take acknowledgments of bail, affidavits, &c., personally appeared W. O. Lofland, mayor of the city of Memphis, John Dwyer, Bernard Dwyer, Daniel Slenlin, Robert Carson, P. O'Neil, Thomas Kelly, M. Garvin, G. W. Taylor, M. Magevney, jr., Michael Magevney, H. Cloths, Thomas L. Power, Michael D. Lilly, Henry E. Green, John Davis, and Jacob Steinkuhl, all to me personally known, who being by me duly sworn, say that the statements contained in the foregoing certificate in regard to Owen Dwyer are the truth, the whole truth, and nothing but the truth, to the best of their knowledge and belief, and subscribed the same in my presence.

In testimony whereof I have hereunto set my hand and official seal, this 26th day of July, A. D. 1867.

[SEAL.]

FEARN PENN,

United States Commissioner.

UNITED STATES OF AMERICA,

State of Tennessee, District of West Tennessee, City of Memphis:

I, Fearn Penn, United States commissioner for the district of West Tennessee, duly appointed under and according to the laws of the United States, do hereby certify that John Donovan, clerk of the criminal court of Memphis, Tennessee, whose genuine official signature is signed to the attestation to the annexed declaration of intention to become a citizen of the United States of America by Owen Dwyer, formerly a subject of Victoria, Queen of Great Britain and Ireland, is and was at the time of signing the same the clerk of said court, duly commissioned and qualified as such; that the attestation of said declaration is in due form of law; that the impress of seal is of the true and only seal of said court, and that all the acts of said Donovan, clerk, &c., in his official capacity, as such are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and official seal, this 26th day of July, A. D. 1867.

[SEAL.]

FEARN PENN,

United States Commissioner.

Declaration of intention.

UNITED STATES OF AMERICA:

At a term of the criminal court of Memphis, begun and held at the court-house, in the city of Memphis, for the 5th, 13th, and 11th civil districts of Shelby county, State of Tennessee, on the second Monday, being the 11th day of February, 1867, present the Hon. William Hunter, judge, &c., presiding; and to wit, on the 12th day of February, 1867, one of the days of said February term of said court, the following is of record, to wit:

Be it remembered, that on this 12th day of February, 1867, Owen Dwyer, an alien, declares on oath, in open court, that it is bona fide his intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he now is.

OWEN DWYER.

Subscribed and sworn to in open court, this 12th day of April, 1867.

JOHN DONOVAN, *Clerk.*STATE OF TENNESSEE, *Shelby County:*

I, John Donovan, clerk of the criminal court of Memphis, do hereby certify that the foregoing declaration of intention of Owen Dwyer to become a citizen of the United States of America, is a true and perfect copy of the record of the same now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Memphis, this 12th day of April, 1867.

[SEAL.]

JOHN DONOVAN, *Clerk.**Mr. Seward to Mr. Adams.*

No. 2032.]

DEPARTMENT OF STATE,

Washington, August 7, 1867.

SIR: I transmit a copy of a communication of the 23d ultimo, from Henry Liebenau, esq., corresponding secretary of the Constitutional Union Association, concerning the cases of Colonel William J. Nagle and Colonel J. Warren, who have been arrested and detained in Ireland on charges of complicity in recent Fenian movements. You are well informed of the views of this government in regard to such cases, and those referred to in the enclosed have, it is believed, been already brought to your notice, that of Colonel Nagle being the subject of my instructions of the 9th ultimo, No. 2016. You need not be informed that faithful service in the armies or navy of the United States during the rebellion constitutes an enhanced claim of persons so serving to the consideration of the government which they have helped to perpetuate; and the instances now before us are of that class.

In presenting such cases to her Majesty's government, it is not expected that you will submit to the perusal of the authorities any expressions which could give just cause of offence to that government. This circumspection should be practiced as well for its favorable influence on the interests of the parties whose release is sought as upon grounds of international courtesy.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Liebenau to Mr. Seward.

No. 4 HAMILTON PLACE, WEST 51ST STREET,

New York, July 23, 1867.

SIR: I have been directed, as you will observe by the proceedings of a meeting of the general committee of "The Constitutional Union Association," hereunto attached, to address you in behalf of the liberation of Colonel William J. Nagle, a

native of our State, having been born at Syracuse; and Colonel J. Warren, a native of Massachusetts, having been born at Boston. The former, (Nagle,) of the eighty-eighth regiment New York volunteers; and the latter, (Warren,) of the sixty-third regiment Massachusetts volunteers; and who are now incarcerated in Kilmainham prison, Dublin, Ireland; without having committed any overt act to justify or palliate such an unwarrantable act of oppression, and in direct violation of that comity of nations so essential to the harmonious and friendly understanding of a Christian people.

With one of these gentlemen, William J. Nagle, I have the honor of a personal acquaintance, and it gives me pleasure to state that I have always known him as a highly honorable and law-abiding citizen, one whom I am confident would not render himself amenable to any violations of British law. You are, I believe, personally acquainted with the family, and, therefore, it is perhaps superfluous for me to dwell upon their character and conduct, except so far as to remind you that *five* of the brothers rendered essential service in the Union army during the late rebellion, while *three* of them were killed in the service.

Colonel Warren, the travelling companion of our worthy fellow-citizen, Nagle, I have not the pleasure of knowing personally, but he is very highly spoken of by those who are familiar with his general reputation.

As American citizens, they are entitled to the protection of our government, while the services they have both rendered in the army of our Union claim, as I am convinced they will receive from you, the earnest and decisive action of the government they have both so faithfully served in its hour of peril.

Permit me, in behalf of the organization I have the honor of representing, to urge most respectfully your immediate intercession in behalf of a speedy release of the aforesaid Colonel Nagle and Colonel Warren.

I have the honor to be, very respectfully, your obedient and humble servant,

HENRY LIEBENAU,

Corresponding Secretary C. U. A.

Hon. WILLIAM H. SEWARD,
Secretary of State.

[The New York Sun, Tuesday morning, July 16, 1867.]

THE FENIAN PRISONERS—MEETING OF CONSTITUTIONAL UNION COMMITTEE—RESOLUTIONS DEMANDING THEIR RELEASE.

A special meeting of the constitutional union general committee was held last evening at Masonic Hall to take into consideration the unwarrantable imprisonment by the British government of Colonel William J. Nagle, of this city, and Colonel J. Warren, of Massachusetts. After a short and earnest deliberation the following resolutions were passed:

We have heard with surprise and indignation of the unwarrantable imprisonment of American citizens in Ireland, arrested on the abject and pitiful pretence of suspicion of being Fenians, and their incarceration in a loathsome prison, subject to the indignities and manacles of convicted felons, in direct violation of every principle of international law and the comity of nations, in consequence of the cowardly fear of danger which the *guilty* only feel from the consciousness of their own transgressions; and

Whereas Colonel William J. Nagle, a native of New York State, and Colonel J. Warren, a native of Massachusetts, both gallant soldiers of our Union army during our late domestic struggle, have been arrested without the slightest overt act on their part while on a visit to their relatives in their fatherland, for no other offence to them known than the expressing here on their native soil a sympathy for the down-trodden country of their parents; and

Whereas the noble act of Commodore Ingraham in demanding of Austria the instant release of Koszta, an adopted citizen of America, met the hearty approval of our undivided nation, and the case of Colonel Nagle and Colonel Warren being entitled to no less a consideration, because of their being natives of the United States: Therefore, be it

Resolved, That steps be taken to effect their immediate release, considering the violation of international law in the case as just and proper cause for demanding indemnification and retribution; be it therefore

Resolved, That our corresponding secretary be directed to address the Hon. William H. Seward on behalf of the organization and in favor of our fellow-citizens, whom we believe are not amenable to British law by any overt act nor by any connection with Fenian movements in Ireland, and urge the honorable Secretary to make a speedy and resolute demand for their immediate release.

Resolved, That a petition be prepared and circulated for signatures by our fellow-citizens under the patronage of our organization.

DANIEL B. NORTHRUP, *President*.

H. J. BANKER,
HENRY LIEBENAU,
Secretaries.

Mr. Seward to Mr. Adams.

No. 2,033.]

DEPARTMENT OF STATE,
Washington, August 7, 1867.

SIR : I transmit a copy of a letter of the 12th ultimo from his excellency Marcus L. Ward, the governor of the State of New Jersey, in relation to Stephen J. Meany, who it appears was tried and convicted and sentenced by the British authorities on charge of participation in Fenian movements.

I am not aware that the additional information as to the proceedings in this case, mentioned in your despatch of the 25th of January last, No. 1309, has been received at the department, nor does it seem to be fully established that Meany is not a citizen of the United States.

You are requested to adopt such proceedings in this case as in your judgment shall be warranted by the facts as they may be developed, and as may comport with the views heretofore expressed to you in cases of this nature.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Ward to the President.

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT,
Trenton, July 12, 1867.

SIR : The subject of the release of Stephen J. Meany, claimed to be a citizen of the United States, and wrongfully convicted and sentenced by the English authorities, has been brought to my notice by a large number of the citizens of New Jersey, with a request that I would call the attention of your Excellency to the case.

Feeling confident of your determination, and that of the Secretary of State, to maintain with firmness and decision the rights of all who, as citizens, are entitled to protection, I would merely add that this case seems to me to require what I have no question you will give it, the fullest consideration.

With the highest respect, I am, yours,

MARCUS L. WARD.

His Excellency the PRESIDENT.

Mr. Seward to Mr. Adams

No. 2042.]

DEPARTMENT OF STATE,
Washington, August 16, 1867.

SIR : I transmit a copy of a letter which has been handed to me by Colonel J. R. O'Beirne, late of the army of the United States. This letter, dated the 10th of this month, and addressed to him by William J. McClure, is in regard

to the case of his brother, who is one of the Fenian prisoners, in relation to whom we have already had some correspondence. Any proper measures which you can set in motion for the relief of McClure and his associates will receive the hearty approval of the department.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

NO. 207 PEARL STREET, *New York, August 10, 1867.*

KIND FRIEND: Pardon me for requesting your services again in behalf of my brother, who is at present confined in Millbank prison, England.

He appears (from a letter received from him lately) to be suffering greatly in his mental organization, produced by confinement, and I am fearful that it will affect his mind, which is not of the living-within-itself type, but requires association to make it active. In his composition he wanders, and some of the lines are erased, I presume by the British officials.

I received about a month ago assurances from Secretary Seward that my brother would be discharged from custody on the subsidence of the Fenian agitation in Ireland. If you will please see Mr. Seward and narrate to him the condition of my brother, and the injurious effect prison confinement produces on his mind, the sympathies of the Secretary may suggest further exertions on the part of the United States' government for the prisoner's release. I do not think he can bear imprisonment long, as my father informs me that he complained of a head affection during his incarceration at Cork, where he was treated quite leniently.

Trusting that you and family are blessed with health, and praying for your happiness,

I am yours, most sincerely and gratefully,

WILLIAM J. MCCLURE.

Colonel J. R. O'BERNE, *Washington, D. C.*

Mr. Seward to Mr. Adams.

2043.]

DEPARTMENT OF STATE,

Washington, August 20, 1867.

SIR: I enclose a copy of a letter of the 31st ultimo from J. J. Rogers, esq., of New York, in regard to the arrest and imprisonment in Ireland of Mr. Augustine E. Costello, an American citizen.

You are instructed to take such measures as you may think proper for securing the early release of Mr. Costello.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Rogers to Mr. Seward.

JULY 31, 1867.

SIR: I have the honor to call the attention of your department to the fact that Mr. Augustine E. Costello, an American citizen, was, on or about the 31st day of May last, arrested at or near Dunganon, Ireland, and imprisoned, and is now held and imprisoned under the "habeas corpus suspension act," of the British government.

I transmit herewith a duly certified proof of the citizenship of the gentleman named, and request that they may be transmitted to our minister in London, and to the appropriate consul in Ireland, with directions for the immediate release of the prisoner.

I am, very respectfully, your obedient servant,

JAMES J. ROGERS.

HON. WILLIAM H. SEWARD,

Secretary of State.

UNITED STATES OF AMERICA,

State of New York, City and County of New York :

Be it remembered that on the twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-six, Augustine E. Costello appeared in the court of common pleas for the city and county of New York, (the said court being a court of record, having common law jurisdiction, and a clerk and seal,) and applied to the said court to be admitted to become a citizen of the United States of America, pursuant to the directions of the act of Congress of the United States of America, entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," passed April 14, 1802; and the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," passed March 3, 1813; and the act relative to evidence in cases of naturalization, passed March 22, 1816; and the act entitled "An act in further addition to an act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," passed May 26, 1824; and an act entitled "An act to amend the acts concerning naturalization," passed May 24, 1828; and an act to amend the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," passed June 26, 1843; and "An act to secure the rights of citizenship to the children of citizens of the United States born out of the limits thereof," passed 10th February, 1854. And the said applicant having thereupon produced to the court such evidence, made such declaration and renunciation, and taken such oaths as are by the said acts required, thereupon it was ordered by the said court that the said applicant be admitted, and he was accordingly admitted, to be a citizen of the United State of America.

In testimony whereof, the seal of the said court is hereto affixed this 20th day of October, 1866, in the ninety-first year of the independence of the United States.

By the court.

[SEAL.]

NATH'L P. JARETT, Jr., *Clerk.**Mr. Adams to Mr. Seward.*

No. 1426.]

LEGATION OF THE UNITED STATES,

London, August 21, 1867.

SIR: In connection with your despatch, No. 2031, of the 6th instant, relative to the case of Owen Dwyer, and his arrest in this country, on a charge of complicity with the Fenian movement in Ireland, I beg to call your attention to the fact which appears in the last of the accompanying papers, that Mr. Dwyer is not yet a citizen of the United States, having declared himself an alien at the time of declaring his intention to become such before the court at Memphis, on the 12th day of February last past. Hence, you will at once perceive that it could scarcely have been in my power to make any requisition of this government for his release.

Very fortunately, the case seems to have been already disposed of by Mr. West, who, so long ago as the 3d of July, had made an application on behalf of Mr. Dwyer, which is believed to have effected his release. Although no report of the fact has yet been officially made to me by him, it appears to be certain that he called at the legation in person some time in the latter days of the last month.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

*Secretary of State, Washington, D. C.**Sir F. Bruce to Lord Stanley.*

[Telegram per cable.]

WASHINGTON, August 22, 1867.

Right Hon. Lord STANLEY, &c., &c., &c.:

I think it advisable to release Nagle and Warren.

BRUCE.

Mr. Adams to Mr. Seward.

[Telegram per cable.]

LEGATION OF THE UNITED STATES,

London, August 23, 1867.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.:

Measures already taken for the object desired.

CHARLES FRANCIS ADAMS.

Mr. Adams to Mr. Seward.

No. 1428.]

LEGATION OF THE UNITED STATES,

London, August 23, 1867.

SIR: I have to acknowledge the reception of despatches from the department numbered 2032, 2033 and 2034, as likewise a telegram by the cable, directing me to urge the release of Colonels Nagle and Warren, being on the same subject with that of No. 2032.

This matter has been already entered upon by Mr. West, so far as Colonel Nagle is concerned, in a note addressed to the authorities in Ireland on the 27th ultimo. The reason why Colonel Warren was not included by him appears to have been his own inability to establish the fact of his citizenship. How material this fact is to the strength of any representation that can be made on my part must be obvious to you at a glance. Yet I cannot but observe, in many of the papers which are sent out to me as coming from the friends of the parties, a great looseness of statement, which tender to weaken my confidence in proceeding upon them as a basis. For instance, Colonel Warren is referred to in the letter of Colonel Liebenau, annexed to your despatch, No. 2032, as being a native of Boston, whilst in his own memorial to the Irish authorities he expressly states that he is a native of Ireland, although he affirms that he is naturalized. But even on this point he has thus far failed to produce any satisfactory evidence.

To the application made by Mr. West in behalf of Nagle, a reply was received by him from the authorities dated the 10th of August, to the effect that, "finding that he came to this country as one of the leaders of an expedition the object of which was to bring in arms and otherwise forward the treasonable designs of the Fenian conspiracy. His excellency cannot, consistently with his duty, order the prisoner's discharge at present."

I very much regret to be obliged to call your attention to the fact that, by an article printed in a New York newspaper, a copy of which I transmit, it would appear that the friends of these parties in America fully confirm the allegation made by Sir Thomas Larcom.

Notwithstanding these obstacles, I have directed Mr. West to renew his representations in behalf of Colonel Nagle, and to make one in behalf of Colonel Warren, mainly on the ground of their services in the war and their allegation that they have committed no overt act of hostility within her Majesty's jurisdiction. This is probably technically true, hence it may justify an application at least for a trial, which I shall endeavor to renew directly to the government here, if a refusal should be given to Mr. West at Dublin.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

H. Ex. Doc. 157—5

A Fenian episode.—A cargo of "hardware" shipped for Ireland, where it ultimately brought up.

NEW YORK, July 20, 1867.

The little brig which conveyed the party of twenty Fenians to Ireland, including Generals Nagle and Warren, an account of whose landing and arrest at Dungarvan, Ireland, has been published, has arrived back. It appears that she was chartered by wealthy Irishmen of this city, who are reported to have cleared her with a cargo of hardware, said hardware being two thousand muskets and considerable ammunition. Arriving off the coast of Ireland, it was found that the brig was not provided with boats, and most of the party were obliged to jump overboard in the night and swim ashore in the surf. The brig attracted attention from the coast guard, but managed to elude them. The cargo of muskets has been discharged. Two or three of the parties came back in the brig. The expedition was conducted with the utmost secrecy.

Mr. Adams to Mr. Seward.

No. 1429.]

LEGATION OF THE UNITED STATES,

London, August 23, 1867.

SIR: In connection with your despatch, No. 2033, relative to the case of S. J. Meany, I have only to remark that, though called upon, he has not yet succeeded in presenting any evidence of naturalization as a citizen of the United States. He has gone no further than to say that he was a "declared" citizen, which I presume means to refer to a declaration of his intention. A declaration does not appear to be considered by the law at home as sufficient to change the allegiance, and certainly would not be admitted to do so here.

The representation of Governor Ward, annexed to your despatch, appears to contemplate still stronger proceedings. It affirms the wrongfulness of the trial under which Meany was convicted and sentenced. Under this view, the question of his citizenship or otherwise becomes one of the first importance, as it regards the possibility of a ground of interference. It would seem necessary therefore to require from those who befriend him the most undoubted evidence on that point.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1433.]

LEGATION OF THE UNITED STATES,

London, August 27, 1867.

SIR: In connection with my despatches, Nos. 1428 and 1429, of last week, relating to particular instances of arrest of persons in Ireland, I deem it proper now to add to them a more general report of the course which has been adopted in regard to other cases in which intervention has been required.

The presentation to Parliament of the petition of John McCafferty, referred to in my despatch No. 1401 of the 5th July, was delayed some time on account of objections raised by Lord Westbury, to whom a copy had been intrusted, on account of some portions of the language used. The consequence was, that a new draught was prepared, but, for some reason unknown, even that was kept back until the very last day of the session of Parliament, when it was presented in the House of Commons by Mr. Taylor. Of course no action could then be taken upon it, and the matter goes over to next year.

In an interview which I had with Lord Stanley some time since, I called his

attention to the facts of the case, as well as to this movement about to be made on behalf of McCafferty, and expressed a hope that no objection would be raised on the part of the government. I added that the doubt as to the validity of the judicial construction of law under which he was condemned had been so strongly felt by a portion of the judges that it seemed to justify an attempt to obtain a revisal of the decision. This had been likewise felt by my government, so that I had been authorized to assume the expense that might be incurred in the proceeding.

His lordship took a note of my statement, and manifested a disposition not unfavorable, but owing, I presume, to the delay of the presentation of the petition, no occasion has occurred for any action upon it.

So in the case of John McClure, referred to in your despatch No. 1996, of the 4th June, I seized the same occasion to say a word in his behalf. I referred to his extreme youth, to his frank manner in which he had admitted his offence at the trial, and to the fact that no real injury to persons or property had been committed by him, as circumstances which I hoped might induce the government presently to remit the remainder of the penalty inflicted upon him. His lordship seemed to take so much interest in the statement that I have little doubt that so soon as the government feels itself in a situation to act, this individual will be among the first to be relieved.

My attention has been called by Mr. West to another case, the representation respecting which seems to have been made by the department directly to him and not through me. I refer to that of Lieutenant Joseph H. Lawler. As there was no evidence furnished by the department that Mr. Lawler was a citizen of the United States, Mr. West very naturally declined the responsibility of making a representation without consulting me. Mr. Lawler when arrested, last year, on being appealed to, promised, but proved unable then, to supply this evidence. The nature of his present situation was aggravated by the fact that he had been released under a distinct intimation that if he should return he would render himself liable to be seized again.

Under these circumstances I have advised Mr. West, nevertheless, to make on behalf of this man such a representation as the nature of his case will bear.

The case of Patrick Kane or Carr, referred to in your despatch No. 2017, of the 13th of July, has been acted upon, but as yet the authorities decline to liberate him. A similar representation in behalf of James Lawless has met with a similar answer. It is, however, to be observed that the language used in the official replies almost uniformly implies that there is no intention of keeping these persons in custody longer than considerations of immediate security will require. The fact that a number of them have violated their engagements made last year, and have appeared again in the midst of the late excitement, has contributed to weaken the confidence felt in the value of any similar promise in future. Were it not for this obstacle, I have little doubt that nearly all would have been released before this. The attempt to keep up the agitation in America too, the newspaper reports of which are constantly transferred to the Dublin journals, contributes to delay their liberation. Even as it is, however, many are quietly released, and are finding their way back to America. I doubt not that the authorities here are quite as desirous to get clear of them as they are to go.

One serious difficulty is experienced here from the very vague ideas many of them have of their citizenship. They construe residence, military service, or a declaration of intention, as giving them a right to protection. Neither do the friends of the parties in America take sufficient care in their representations to the department to be accurate in regard to these points. They frequently write to these prisoners, raising their hopes of interference merely on the fact that they have made such representations. It might, perhaps, be well that they should be made aware that the first and most indispensable step is clear proof

of birth or naturalization. After which it might not be amiss to add as much evidence as practicable of freedom from participation in hostile movements.

I may be permitted to express the belief that no case which has been presented, either by the department or directly by the parties in Ireland, giving reasonable proof of national character, has thus far failed to receive every practicable attention.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Seward to Mr. Adams.

No. 2049.]

DEPARTMENT OF STATE,

Washington, August 30, 1867.

SIR: We have hoped that the condition of society in Ireland would be such, before this time, as to satisfy her Majesty's government that it might safely rescind the suspension of the *habeas corpus*, which is attended by so many cases of irritation and annoyance. There is one peculiar hardship which seems to require attention, if the practice of arbitrary arrests in that country is to be continued. The authorities in Ireland, properly enough, deny to the United States consul the right of intervention in cases of arrest, except where the person arrested is a native or naturalized citizen of this country. At the same time it is understood that there is no law or regulation in force in Ireland which requires the exhibition of passports by foreigners visiting that country. It has happened several times that American citizens, travelling without passports, have been arrested in Ireland and denied the good offices of the United States consul until they could procure evidences of citizenship to be sent from the United States.

Our own experience taught us, during the war, that in whatever case the *habeas corpus* was suspended, prudence required us, in regard to foreign relations, at the same time to give notice that passports would be expected from foreigners coming within the region where the writ was suspended.

Will you have the goodness to mention this subject to Lord Stanley?

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1438.]

LEGATION OF THE UNITED STATES,

London, September 3, 1867.

SIR: In connection with your despatch No. 2032, in regard to the case of Colonel John Warren, I have the honor to transmit a Dublin newspaper containing what purports to be two letters written by him from Kilmainham jail. Colonel Warren has not yet established proof of his naturalization; but, relying on his own affirmation of the fact, the necessary representation has nevertheless been made on his behalf. It is much to be regretted that, by an act of this kind, done in contempt and without the knowledge of the authorities, he makes it still more difficult for us to serve him successfully. It is quite apparent to me, that one great object of these parties is to attempt to excite public feeling in America so far as to force the two governments into a conflict on the questions thus raised by them on their arrest and imprisonment. Whatever may be the sympathy of

our fellow-citizens with Ireland, it can scarcely be so great as to induce them to fall into such a trap with their eyes open. I have reason to believe that the continuance of the detention of most of the persons now held in prison is owing to the distrust created by the gathering of more or less of the suspected class from America in Liverpool, and other places, as if they were still meditating plans of insurrection. The government is generally so well informed in America about these movements, that it rarely acts without a strong basis of presumption to sustain it. I shall persevere in my efforts to be of use to all citizens of the United States, and especially to those who may suffer unjustly from this arbitrary system; but our own indignation is too fresh yet in America against people from here who yielded assistance to our insurgents, for me to entertain great sympathy with similar attacks made from our side against the public peace of this kingdom.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the Dublin Weekly News, August 31, 1867.]

A voice from the dungeon.—A question for the American people.

The following important and able document having reached our hands, we lose no time in laying it before the public, whose attention it fully merits. We trust our numerous American exchanges will insure for it in the United States a circulation that will bring it home to the consideration of the people to whom it is more particularly addressed, and whose interests and honor are deeply involved in the question which it propounds and argues in so masterly a manner. The principle involved in the case of Colonel Warren is one that the American government is bound to look to, if it does not mean to forfeit its duties towards its adopted citizens and lower its character in the eyes of the world.

KILMAINHAM PRISON, DUBLIN, IRELAND,

August, 1867.

To the Irishmen in the United States :

FELLOW-COUNTRYMEN: In calling your attention to my case, I do it not on personal grounds. My case is your case. Business or pleasure may any day bring you here, and it is well you should know positively if you are still subjects of her Britannic Majesty, amenable to her laws, or if citizens of the United States and entitled to her full protection. While in my adopted country my highest ambition was to obey and protect her laws, never dreaming nor, in fact, acknowledging that it was obligatory on me to regard or respect any English law, whose allegiance I indignantly renounced at my first opportunity. Was there an effort for freedom the world over—a spark, a gleam—every American freeman sympathized with it; and when the infant Cretan rose against the powerful Turk, America, true to her republican doctrines and right of self-government, was the first to sympathize; and when lately the accumulated wrongs of poor Ireland tortured her into a premature outbreak, the Catos and Ciceros of the American House of Representatives nobly avowed their appreciation of the gallant movement. Under such an influence, such an inspiration, how can the Irishman whose political ideas are moulded in America, independently to his love of native country, do otherwise than sympathize with Ireland? And I do hold it is the duty of America to immediately protect any citizen whose liberty is assailed for giving expression to opinions in America favorable to the spread of republicanism and self-government. From the forum, press, and council chamber comes forth the spirit of freedom; we imbibe it; it is contagious. The American Constitution is the teacher—the minister; we are only a portion of the congregation. If our opinions and aspirations in favor of freedom are wrong, the teacher is wrong. If we are to be imprisoned, without appeal, for expressing and promulgating these teachings, why, the teachers should be locked up in Fortress Monroe, to prevent the spread of a heresy and a pernicious doctrine—all provided that no foreign law is violated.

This, my fellow-countrymen, is my position. 'Tis true I sympathize with all who aspire to self-government. It is also true that I have violated no English law, and it is doubly true that if circumstances could prove that I conspired against British dominion, on British soil, or were I found in arms fighting for freedom, no word of mine would be used to save me from the gibbet. But here, prompted by the dictates of a God-inspired love of my old home, to revisit old and dear scenes, full of hope, ambition, confiding—proud to meet my old companions as a modern Roman, a freeman, an American citizen—I neared these old loved

scenes and companions and relations, when, without any cause, I am arrested, cast into a dungeon, and for more than two months am treated as an ordinary prisoner, reduced to the equal of the murderer and robber, in solitude and silence. Unaccountable are the ways of the Lord, and great is the fall, and blighted the hopes, from the proud position of the modern Roman, and love's heartfelt hope of an immediate meeting with the old friends, to the position of an ironed felon and a dungeon; but conscious of never having willingly injured any one, in peace with my God, I will bear it as becomes an Irishman and a Christian. I have said my case was yours. In proof, on your arrival here you may be supplied with a passport, and consider yourself perfectly safe; but be careful—you may have brought an Irish bond, or, in your exuberance and excitement of the moment, you may have thrown hat at a meeting where some head-centre was belaboring John Bull, or you may have looked at No. 19 Chatham street, or 169 Broadway, as you went by; this is quite possible. Well, you arrive; you wear a good coat and a villanous moustache, and you have acquired a habit of standing erect and dashing ahead, swinging your hand, and, your republican barbarism, if you meet a lord you don't take your hat off; you look him right in the face; you don't get nervous; in fact, you care as little about him as about a common man. You wear the murdering square-toes, (the man who introduced that fashion has bagged more Americans than Corydon ever will;) all go to prove that your education is dangerous; that you don't worship monarchy; that you're a republican—a freeman. You're pounced on; you get indignant; what right have the mercenaries of England to interfere with you, an American citizen? But now you have spoiled it. If you had kept your mouth shut you might have had some chance. A little of the brogue is left; you are an Irishman; your goose is cooked. Well, you wax warm; you shake Andy Johnson at them; you tell them you will have him to send to Connecticut, the land of wooden hams and nutmegs, and get a big wooden spoon made, and come over here and spoon the G—d d—n kingdom into the Atlantic. Bluster away, old fellow, 'tis no use. On go the darbies, and such a sight! Why, *tear-an-ouns*, your mother would not know you now, man; for there are soldiers, and policemen, and lancers, and governors, and deputies, and detectives, and crown prosecutors, and turnkeys—such a sight! It beats Finnigan's ball out and out. Forward! On you go, en route for Dublin, and the only bright spot in the whole scene are the maledictions cast by the old women on the peelers as you go along, with an occasional old shoe or a stone thrown at their heads, and the prayers of the said old women for you. You get to Dublin; the darbies are taken off; you are in your cell; God's light just peeps in through a small heavily grated window. Place your back to the wall, and if you feel like hitting out, *a la Heenan*, you can strike the wall at the other side. Sit down and meditate. Are you not in a tight place, Mr. Jonathan? There you are, though; you can apply to the United States consul: you have your passports; he will attend to your case. If you did not have this, you have to wait till the next mail was going to America. Write for your naturalization papers; write to this dignitary; he comes when he gets ready, and calls at the castle in your case when it is convenient. But wake from your reverie—'tis nine a. m. There is a noise at your door; a little door is pushed one side, when, for consolation, a gruff voice summons you to appear and pick up, Mr. Republican, your breakfast, a dipper of stirabout; but never mind this; there are hundreds of good men in Ireland who are not sure of this same. Now sit down and eat. Don't you feel lonesome for your cocktail? Ten o'clock. The bell rings; stand in your door and fall in four paces from each other with the crowd, who are to be exercised in the bull-ring. The bull-ring is a closely confined yard, and the only difference between exercising or ox driving, and the exercise, or American-citizen driving, is, that the ox is a quadruped, or four-footed animal, and is driven at the point of a stick, while you are a biped, or two-footed animal, and are driven at the point of the bayonet, and with loaded revolvers in the hands of soldiers and prison officials. Walk on, old fellow, keep bobbing around; you must not stop to speak or look at any one for two mortal hours. Twelve o'clock. You are relieved in the bull-ring, and return to your cell. Here you amuse yourself, which can be profitably and concisely done, (the prospects and scenery are all within eight feet by ten feet,) till three o'clock, when your small door is again opened, and your dinner, a junk of bread and a can of milk, is pushed in to you. Your memory immediately ruminates, and you think of Delmonico, Leggett, Crook, and in your magnanimity you even think of the coffee and cake man. Keep up your spirits. Four o'clock. Your door is again opened and a powerful gas-light is lit, which burns, by the doctor's orders, all night for the good of your eyes, and, if the nimble-hopping enemy attack you, to get at him with your eyes open. Five o'clock. You stand at your door to be inspected by the governor and some of the officers of the garrison, after which you are shut up for the night. This is a good time to meditate. Just think of your coming home from business and meeting a happy family. Think of your hot flap-jacks, your doughnuts, and chops. Oh, don't; 'tis murder! But think of vengeance, retribution! your God! Such, my countrymen, is the position into which any American is liable to be thrown if he visits England, Ireland, or Scotland. There is nothing to prevent his arrest; nothing to prevent a Massey or a Corydon to swear he saw him at a public meeting in America, saw an Irish bond hanging up behind his counter, or saw a name to correspond with his published through the press as having spoken or written in favor of republicanism. In some cases proof may be easily obtained, and the party released. In others it may take a month, two, or three; but the very idea of the myrmidons of England being permitted,

for one moment, to touch an American citizen and imprison him for presumed acts done in America, should rouse the indignation of every American citizen, and demand that England should be made immediately and significantly to understand that *no American citizen is amenable to her laws for acts committed within the jurisdiction of the United States*. If England *pointedly* understood this, she would never attempt to persecute American citizens as she does. Why, it is only a few days ago since an American from Nashville, Tennessee, a man who actually did not know General O'Neill, who lives there, was arrested in London and confined in Kilmainham for a month, subjected to the treatment above described, because he looked like Colonel W. R. Roberts. If England were to know this she would not hold me an hour in custody. It is possible I may be released by the interposition of my government in some time; but where is my redress for my sufferings and probable loss of health, and the loss and suffering of my family by my being unable to provide for them, and, greater still, for the indignity, the insult, the national wrong, the defiance offered to our common country every day by the arrest of her citizens, both native and adopted? Your bed, Mr. Republican, is democratic enough. It is a piece of canvas nailed on to two flat pieces of board, just big enough to get into. The covering has done its turn well, and has in its day enveloped the murderer, the robber, and the pick-pocket without being sufficiently abused with soap to change its plumage. Sleep, sleep; but you are uneasy. You kick at imaginary something; you again think of home, mother, wife, and children. But compose yourself; you have one inseparable luxury which the miscreant informer cannot take from you, and which he, wretch, never will possess—a clear conscience. Sleep, sleep, and dream of home. Five o'clock. The bell rings; get up. The scriptural phrase, "Take up thy bed and walk," won't apply, but "make up your bed and sling" it up to the wall. The next order is "Take arms," shoulder, and present yourself at your door, chamber ornament in hand; next, "march" by the closet to the wash-room, where stalls are built for the American animals, but, by a recent magnanimous act of parliament, they have dispensed with putting the halters on. Wash—driven, as a matter of course; don't look or speak to any of the other animals; return to your cell; and thus ends one day and begins another in Kilmainham. Let us see what the United States consul is doing in your case in the mean time. 'Tis three o'clock. He is after his dinner and feels well. He walks forth as proud as a peacock. He knows he is admired; the people love him because he is a representative of freedom. He walks to the castle; even here he must be respected. In the course of conversation with some of the officials on the result of a game of billiards they had the night before, it incidentally occurs to him he may as well inquire into your case. "What progress?" he inquires. He is told those congenial assistants of the Crown, Messrs. Massey and Corydon, are at present engaged in another part of the country in pursuit of their profession, and would not be able to come to Dublin for some weeks yet. He calls again and again, gets no satisfaction, and, after months, refers that case to the minister in London. Let us look in there and see what are the prospects. There is Mr. Adams himself, as stiff and starch as a lord. He is sitting at his desk, and in turning a lot of papers yours (you're lucky) fortunately turns up. He reads, turns to a clerk, and instructs him to write to the castle in Dublin for a copy of documents and papers connected with your arrest. He receives an answer that they will be furnished at the earliest opportunity. He is satisfied. Diplomacy! And thus it is, Mr. Republican, between the diplomacy and the red-tapeism and the toadyism and the flunkeyism. The *habeas corpus* suspension acts may have expired, and you crawl into existence again, broken down in health, business ruined, with a cauldron of vengeance burning in your breast, and no increased love for your own government.

I repeat again, my countrymen, that my application to you is not personal. It is general, and seeks the removal of and redress for a general insult. You have entered into a sacred compact with the American government. You have renounced all former allegiance and have sworn to obey and protect her laws. By your industry, by your manual labor, by your intellect, by your capital, by your devotion, by your blood on the battle field, you have, in proportion to your number, done more than any other class of citizens to raise your adopted country to the proud position which she holds to-day. You are a producing class. You are the material from which, in case of internal or foreign war, the fighting element is to come. You, in case of a draft, seek not money exemption; you prefer to take your position in the field. You are the faithful sentinels on the outpost, guarding with a jealous, with a vengeful eye the sacred approaches to republicanism and freedom from the insidious sallies of Englishism and monarchy. While you have done and are doing all this, you are neglecting a sacred duty to yourself, to your children, to posterity, to the aspirations of freedom, and to generations yet unborn, by, without remonstrating, permitting England with impunity for one hour to hold in imprisonment an American citizen for presumed acts committed in America, thereby defiantly ignoring your citizenship, and consequently the right of the United States to confer it. I seek no organized or organization interest in my behalf. I will fight my own battle while there is a rule left; I know my rights and will seek them; and if I have not in the ordinary walks of life made friends sufficient to see justice done to me, now let my case go. I am only an humble individual; but protect the sacred right of citizenship. I have placed my case on the desk of the President, as will be seen by the subjoined letter. I have in a true and independent style stated my case. It is short. I am a United States

citizen. I have violated no English law. I am falsely imprisoned and seek his protection: and I am sure that that independence of character which marked his noble conduct on the occasion of the patriotic position which he took in his native State, when native enthusiasts, instigated by material aid and still further promises from England, nearly pulled down the temple of liberty, will, on the occasion of this encroachment on the Constitution of the United States and abuse of her citizens, when properly placed before him, rouse his old Hickoryism again, and in discharge of his grand mission he will independently notify John Bull that now and forever more no citizen of the United States is to be touched for acts committed in the United States, and as an indication of what he is going to do and what he will do, he will despatch, "Drop that Irishman, Warren, you have in No. 17 Kilmainham. The keeping of him twenty-four hours longer won't be conducive to your health."

I am, fellow countrymen, as ever, no better or worse,

JOHN WARREN.

Letter to the President.

KILMAINHAM PRISON,
Dublin, Ireland, August 3, 1867.

DEAR SIR: I most respectfully call your Excellency's attention to my case. By birth an Irishman, by adoption an American citizen. Here is a member of the press, collecting notes, coupled with the desire to see the old scenes, and to meet the old friends of my boyhood, and near and dear relatives, I was arrested on the 1st of June, and have since been closely confined in silence and solitude. I have violated no English law. No evidence has been advanced against me. I have repeatedly demanded my release, or an immediate trial; and now, as an American citizen and a freeman, ask your Excellency's interposition in my behalf, to obtain a right (my freedom) which England has no power to take, and which claims your Excellency's protection. My friends will place my case more fully before your Excellency.

I am your Excellency's faithful friend,

JOHN WARREN,
Citizen of United States.

His Excellency ANDREW JOHNSON,
President of the United States, America.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,
Washington, September 11, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.:

Urge prompt release of Nagle and Warren. Bruce recommended to Stanley when I last despatched. Affair is embarrassing.

WILLIAM H. SEWARD.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,
Washington, September 13, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.:

Collector of customs at New York reports the Fenian episode of your 1428 a mere sensational fiction.

WILLIAM H. SEWARD.

Mr. Seward to Mr. Adams.

No. 2053.]

DEPARTMENT OF STATE,
Washington, September 13, 1867.

SIR: With a view to the better understanding of the merits of the cases of such persons, claiming to be citizens of the United States, as may have been or may hereafter be arrested in Great Britain, upon charges or suspicion of complicity in hostile proceedings against that government, you are requested to do what may be practicable towards having this department furnished promptly, through our consuls or otherwise, with a copy in each case of the minutes of any judicial proceedings or examinations which may be held.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1448.]

LEGATION OF THE UNITED STATES,
London, September 13, 1867.

SIR: Having received from Mr. West, the consul at Dublin, a report of the condition and treatment of Colonel Nagle, which seemed to me unreasonably harsh, I did not await for a response to the second representation made by him to the authorities, but at once addressed a note to Lord Stanley on the subject, a copy of which I have the honor to transmit.

The morning after that was despatched, I received your telegram on the same subject, calling upon me to renew my urgency for the release of both Colonel Nagle and Colonel Warren.

I have, in accordance with your desire, addressed a note to Lord Stanley, a copy of which I have the honor to transmit.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,
Secretary of State.

Mr. Adams to Lord Stanley.

LEGATION OF THE UNITED STATES,
London, September 11, 1867.

MY LORD: It is reported to me by the consul of the United States at Dublin, that he finds in the case of Colonel William J. Nagle, a native American citizen, now confined in prison in Kilmainham jail, on suspicion of complicity with hostile designs against her Majesty's government, that there is reasonable cause of complaint on the score of the severity of his treatment. He is kept in close confinement in a narrow cell for twenty-two hours out of the twenty-four, bound to preserve strict silence all the time. The effect of this course has been already materially to depress him in spirits and in health.

It is alleged, in justification of this course, that it is in conformity with the system of rules established in that prison for all persons there confined; to which I would beg permission to observe that surely there should be some distinction preserved between persons confined on suspicion, without any offence proved against them in due course of law, and those who are subjected to a penalty for their offence after their guilt has been fully established.

I have received from my government very strong instructions to do all in my power in behalf of Colonel Nagle, on account of the services rendered by him and several brothers during the late difficulties in America, as well as of his character as a citizen. I cannot but permit myself to hope that he may at least have an opportunity early afforded him of being put on his trial for any offence he may have committed. At the same time, I have thus far forbore to press the case on your lordship's attention, in the hope that the representations already made, and still pending at Dublin, may yet meet with favorable notice. Meanwhile, however, I would pray your lordship's aid to procure some alleviation of the alleged harshness of his treatment.

I pray, your lordship, &c., &c.,

CHARLES FRANCIS ADAMS.

Right Hon. LORD STANLEY, &c., &c., &c.

Mr. Adams to Lord Stanley.

LEGATION OF THE UNITED STATES,

London, September 13, 1867.

MY LORD: Since the despatch of my note to your lordship of the 11th instant, in regard to the case of Colonel Nagle, I have received from my government special instructions to urge the early release both of that gentleman and of his companion in prison, Colonel Warren. Whatever may have been the purposes of those gentlemen in coming to Ireland, on which I am not called to give any opinion, it is quite clear at least to me that they could not have committed any act of hostility to her Majesty's government within her jurisdiction which would fairly subject them to the probability of condemnation, if tried in a court of justice. Hence it is hoped that the confinement and severe treatment to which they have already been subjected may be regarded as sufficient penalty for anything they might even be suspected to have intended to do, to entitle them to a release at an early day.

I pray your lordship to accept, &c., &c., &c.,

CHARLES FRANCIS ADAMS.

The Right Honorable LORD STANLEY, &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 2054.]

DEPARTMENT OF STATE,

Washington, September 14, 1867.

SIR: Your despatch of the 23d ultimo, No. 1428, in relation to the cases of Colonels Nagle and Warren, has been received, and a copy of the paper which accompanied it has been submitted to the collector of customs at New York, with a view to an inquiry as to the truth of the statements made therein. I transmit a copy of the collector's reply, the tendency of which is to throw discredit upon those statements.

A special interest is felt in these cases by a large number of highly respectable and influential citizens, as an illustration of which you are informed that the President has recently received and referred to this department, petitions in the form of one which has already been forwarded to you, containing upwards of a thousand signatures, embracing those of the mayor of Brooklyn, judges and other judicial and civil officers, and many persons of eminence.

The communications which have been addressed to you render it unnecessary for me to assure you of the gratification which would be afforded by an early release of these officers.

There is probably little doubt that Colonel Warren is a naturalized citizen of the United States; but I have pointed out to the applicants in his behalf the importance of positive proof of the fact of citizenship.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Smyth to Mr. Seward.

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
New York, September 12, 1867.

SIR: I have the honor to acknowledge the receipt of your letter of 11th instant, and to state, in reply, that the records of the several departments of this custom-house do not enable me to furnish any facts or information in regard to the subject-matter to which you refer.

If specific data—say name of vessel, and date of sailing—were at hand, it is believed that the files of this office would repudiate the suggestions of the writer of the enclosure of your letter.

I am, sir, with much respect, your obedient servant,

H. A. SMYTH, *Collector.*

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,
Washington, September 20, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.:

Obtain definite answer about Warren and Nagle.

WILLIAM H. SEWARD.

Mr. Seward to Mr. Adams.

No. 2056.]

DEPARTMENT OF STATE,
Washington, September 20, 1867.

SIR: Your despatch of the 3d of September, No. 1438, has been received. It relates to the cases of John Warren and of W. J. Nagle, so-called Fenians. It is accompanied by a printed copy of letters of Colonel Warren. Beyond a doubt their publication has a tendency to counteract a favorable disposition on the part of her Majesty's government in his case. You rightly therefore disapprove of it. A disposition is indicated here, by some persons who sympathize with Fenian movements in Great Britain, to work out a certain issue between the governments of the United States and Great Britain which is expected to be connected with those movements. That issue may be distinctly stated thus, namely: that her Majesty's government arbitrarily seize and detain, without trial or process of law, in the British realm, unsuspecting citizens of the United States sojourning or travelling there—not for breaches of the peace, or for offences of any kind committed within the realm, but for matters of speech or conduct

occurring exclusively within the United States, and which are not forbidden by treaty or by local or international law.

The detention of Warren and Nagle is liable to be used for the purpose named. Each of them is known to be a citizen and to have made a meritorious officer in the service of the United States. There is no evidence that either of them has committed or attempted to commit any offence or breach of the peace in Great Britain, while evidences to justify or excuse their detention are understood to be made out of an avowal, *in the United States*, of sympathies with Fenianism.

In conference with the late Sir Frederick Bruce, it was thought expedient to ask by telegraph that they should be discharged. He despatched to Lord Stanley a message to that effect on the 11th of September, simultaneously with a despatch which was transmitted by this department to you. On the 13th I renewed the suggestion by telegraph. I have again renewed it in the same manner to-day.

The President has expected that courtesy and conciliation would induce a compliance with a request which was inspired by good will to Great Britain. A definite reply has now become absolutely necessary. What use you shall make of this despatch, whether to treat it as public or private, is left to your own discretion.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.,

Mr. Adams to Mr. Seward.

No. 1455.]

LEGATION OF THE UNITED STATES,
London, September 21, 1867.

SIR: I have to acknowledge the reception of despatches Nos. 2,049 and 2,050 from the department, and likewise a telegram of the 19th announcing the demise of Sir F. Bruce, and another of the 20th, in regard to Colonels Nagle and Warren.

There can be no doubt that the inconvenience to Americans who visit Ireland for any purpose of business or pleasure is very considerable. I shall take the earliest opportunity to see Lord Stanley for the purpose of suggesting your remedy of a passport to meet the temporary need.

I regret to be obliged to report little prospect of relief to those persons now under arrest and detention in prison on account of their supposed complicity with the attempt at insurrection there. The authorities are becoming less and less disposed to grant releases upon any conditions whatever. The late successful attempt to rescue the two persons taken at Manchester, of which I transmit a report in the Times and the Star, 20th September, has been attended with such violence and bloodshed, that I very much fear the temper of both the government and people will not be much longer restrained from dealing with the offenders with the utmost severity. It is unfortunate that these events take place just at a moment to revive the feelings which would have otherwise been so far quieted as, I doubt not, to have admitted of the liberation of almost, if not all, the persons remaining in confinement.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the London Times, September 20, 1867.]

THE FENIAN RESCUE AT MANCHESTER.

MANCHESTER, *Thursday Evening.*

The latest accounts obtained from eye-witnesses of the attack upon the police-van yesterday indicate a skilful organization beforehand to take advantage of an opportunity. The attacking party seems to have numbered about fifty, a large proportion of whom had pistols; some of them had revolvers, while others of the band were well supplied with hatchets, hammers, and stones. The place chosen for the attack was probably the best that could have been selected for the purpose, being just outside the city, near a railway arch crossing the road. When the van approached the place the abutments of the bridge served to conceal from its conductors the party that was awaiting them, until they had driven into the ambush. Men had been noticed loitering about the place all day. It is now evident that they were on the look-out for the van passing on its way to the jail with the prisoners, and that the rest of the gang, though scattered, were sufficiently near to be summoned on a signal being given by those stationed on the road. These, again, were duly prepared for the arrival of the van by confederates who preceded it in a cab from the police-court. The prisoners had been remanded early in the day, but kept in the cells of the court-house until, all the business being over, there were more than thirty prisoners ready for removal in the van, including Kelly and Deasy, the Fenians. The attack consequently was not made till about four p. m. It is unfortunate that the authorities received no information of the suspicious appearances on the Hyde road, and that although, on the occurrence of the disturbance we mentioned in yesterday's account at the exit from the court, the hint seemed to be so far acted upon in official quarters as to provide an extra escort of police—eleven constables being sent in charge of the conveyance—the precaution was not carried so far as to provide against a formidable attack with fire-arms. As the event proved, the assailants had made calculations adequate for the enterprise. Some persons have suggested that the publications in the local papers of the fact that supposed Fenians were in custody should have been prevented by the police, as it was giving warning to their friends to prepare for the rescue. It is at least equally probable that their friends had prepared for the opportunity as soon as their capture was first known in their own haunts, and before the newspapers obtained the information. When the van had driven into the midst of the assailants the horses were at once shot, the driver dislodged with a stone, and the practically defenceless police were driven off by a volley of pistol-shot. Then the armed assailants surrounded the van, keeping the police and the spectators at bay, while the men who had been provided with the requisite implements set to work to break open the door and the roof. The van being a very strong one, the task was one of considerable difficulty, and shot after shot was fired both among the crowd and into the wards of the lock before an opening could be effected. When the door was burst open, the man who is believed to have taken the leading part throughout, a Fenian named O'Meara Allen, was the one to complete the work, entering the van and demanding from the officer inside the keys of the separate compartments in which the prisoners were locked. The officer, Sergeant Brett, not complying, was shot in the head fatally by Allen, according to very positive statements, and the prisoners were then set free. In the general chase across country which immediately followed it was observed that Allen seemed to cling to Kelly, while a man named Larkin kept close to Deasy, and thus the handcuffed fugitives were helped over obstacles, such as walls and fences. But the pursuit became too hot for this plan to be acted on to the last. The men separated, and ultimately both Larkin and Allen were run down, while the "head centres" escaped, and have not yet been heard of. Allen was heard saying to Kelly immediately after the release and the shooting of the policeman, "Kelly, I will die for you!" He was captured at Beswick, and had then twenty rounds of cartridge for breechloaders, but had been so hard pressed in the run that he had no time to load.

No further violence is reported to-day, nor is any outbreak apprehended. Nearly thirty prisoners have been apprehended as the result of the chase last night and the search in those districts where Fenian sympathizers are known to resort. The whole of the prisoners were examined before the magistrates this afternoon, merely to be identified as having been seen engaged in the attack, and they were at once remanded for a week. They are lodged at the Central Police-station, under a guard of fifty of the 57th Foot, commanded by Captain Halstead. An escort of the 8th Hussars accompanied the prisoners when they were removed from the lock-ups to the police-court and back again, a distance of about two hundred yards. The streets were much thronged with lookers-on, who attempted no disorder.

The following are the names of the prisoners first captured and the charges against them: For wilful murder, William O'Meara Allen and Michael Larkin.

For riot and murder, William Martin, clerk, aged 35 years; William Gould, clerk, 30; Louis Moore, joiner, 56; Patrick Hogan, laborer, 26; John Carroll, laborer, 23; Charles Moorhouse, clerk, 22; John Gleeson, laborer, 42; Patrick Barragan, laborer, 49; Henry Wilson, clothes dealer, 28, at whose house Kelly and Deasy were first apprehended; Michael Joseph Boyland, schoolmaster, 37; William Wells, laborer, 29; Michael Corcoran, laborer,

29; Edward Shore, *alias* Short, traveller, 26; John Butler, weaver, 54; Patrick Cloney, scavenger, 69; Patrick Kelly, laborer, 35; Michael McGuire, clothes dealer, Smithfield market, 32; Patrick Daley, tailor, 36; William Luther, striker, 19; James Woods, hackler, 22.

An exciting scene took place this morning at the A division of the police station, on the occasion of the prisoners being placed in line for identification. A great crowd of people blocked Albert street, and manifested an intense eagerness to secure a point whence they could view the probable removal of the prisoners to the city court. In the rear of the station the military were drawn up in line, each man having twenty rounds of ammunition. The prisoners were arrayed along the main corridor, and as witness after witness passed up and down the line the expression on the prisoners' countenances showed, in most cases, that the men had something like the "courage of despair." Occasionally some of the witnesses would have to repeat their walk up and down more than once. Not a word was spoken during each single progress. The several witnesses, after the inspection, communicated their knowledge to a sergeant in charge.

Charles Thomas, a plumber and glazier, identified Allen, Larkin, and two others. He had observed them before, during and after the affray. Before the attack he was watching them from over a wall, standing on a dog-kennel. He saw one of them run from the Hyde-road Hotel, and give the word to the others, and immediately afterwards the van came in sight. Two of the men, whom he is able to identify, he saw drawing a revolver each, and they appeared so deliberate that he said to a neighbor, "Good God, these men are going to fight a duel." He observed Allen, who was dressed in a light coat, with a pistol in each hand, and when he was not firing he was hammering away at the van. He saw him fire the shot into the van.

Edwin Walton, a japanner, in Mr. Port's employ, Ancoats, besides observing Allen, gave much of his attention to another man, who appeared to be an officer of the gang. He was well dressed, wore a hat, and the lappels of his coat were bordered with worked silk. He also had a light mustache. After the rescue this witness joined in the pursuit, and while others chased Allen, he went after the well dressed man. He came up with him at the wall near Ashton road, and helped to capture him. He also identified three others.

James Mayer, a barman, identified Allen and two others. When Sergeant Brett came headlong out of the van, Allen, who had been off a little distance exchanging his discharged revolver for a fresh one, rushed to the front and swore he would shoot anybody dead who came near. After the fight the witness followed them. Kelly and Deasy were in handcuffs. When they got to a wall Allen jumped up, and got hold of Kelly's arms to pull him after him, while some men below hoisted him at the same time. The other officer tried to help one of the other men over in the same way, but he could not, and he ran away. This other man was captured.

William Hughes, a locomotive fitter, in the employ of Boyer and Peacock, identified six of them. He saw Allen fire three times while the constables were kept at bay. One of his shots took effect in Prowsen's heel, who cried, "My God, I'm shot!" (Prowsen was a bystander.) He also saw the other officer, the man with the lappelled coat. He noticed that while they were waiting for the van to come up this man seemed to be receiving news and giving orders.

Thomas Sperry, in the employ of the Midland Railway Company, identified three as the men he saw running across the line, pursued and pelted by some platelayers. He did not know what had occurred at the time, but, as he said, the platelayers "were making it so hot for them" that he could not help noticing it.

John Hayes, master brickburner, was in his croft during the *mêlée*. He saw the whole affair. Two of the men, whom he now identified, were trying to turn the horses' heads towards Manchester, and, as they plunged a good deal, one of the men fired his revolver into the animal's nostrils, and then both of the men tried to pull the brute on his haunches. Allen at this time was keeping guard, daring the crowd to interfere. After Allen had fired several shots witness saw him go to a man on the other side of the arch and change pistols. Two other men, whom the witness identified, took a leading part. One of them, cautioning his comrades, said, "Don't shoot, or you'll hit Allen." (At this time Allen was in the van.) Larkin seemed to be taking charge of Deasy in the same way Allen was attending to Kelly. Witness followed the crowd as far as Beswick, and was present when Allen was captured. Allen had then twenty rounds of cartridge for breech-loaders, but had been so hard pressed that he had not time to load.

[From the Manchester Examiner and Times.]

THE FENIAN RESCUE AND OUTRAGE IN MANCHESTER.

The two men who it was stated in yesterday's paper were believed to be the Fenian leaders, known as Colonel Kelly and Captain Deasy, were again brought before the city magistrates during the morning, for the purpose of a formal remand only; and it would appear that their friends, on learning of the capture, had determined not to let slip the oppor-

tunity of a rescue which might occur during the conveyance of the prisoners between the police court and the city jail. We regret to have to relate the success of this enterprise, attended with a scene of fatal outrage which has naturally created the most painful excitement and surprise in the neighborhood where it occurred, so little accustomed are the inhabitants of this part of the kingdom either to see or to apprehend the triumph of an armed band of desperadoes over the agents of the law. The police van was stopped and broken open in the Hyde road, the captives were set free, and their guards were shot, one of them fatally. Some of the leading perpetrators of the crime were promptly secured, and it was probable that further arrests would be made last night after this account was written. The affair seems to have been thoroughly organized beforehand, and carried out by a resolute commander. It is most unfortunate that the police were not prepared to resist such an attack, and that no report of the preparations made for it should have reached the authorities in time.

The account of the apprehension of the two men last week, and the report we published of the suspicion that they might turn out to be connected with the Fenian movement, would probably not attract as much attention as the event proves it to have merited. The circumstances under which they were apprehended seemed to prove that they were prepared for violence, even if they did not contemplate it. The police had observed four men loitering about in a manner that might indicate that a robbery was being planned. It was between three and four o'clock on Wednesday morning. Two of them were accordingly taken into custody, while the others made their escape. The prisoners made a great resistance, but were overpowered. It had been noticed that they tried very hard to get their hands in their pockets. On being searched, each was found to have in his pocket a loaded revolver. The two men, who spoke with an Irish-American accent, and said they were American citizens, were brought up and remanded by the city magistrates on the representations of Superintendent Maybury that he had reason for thinking it might prove that they were Fenian refugees. The subsequent communications with the Irish police have led to their identification.

When the men were again placed in the dock yesterday, Superintendent Maybury, of the Manchester detective department, said he believed Inspector Williams, of London, had a communication to make to the bench. Mr. Williams said he had been instructed by the authorities at Scotland-yard to apply to the magistrates for a remand. He had reason to believe that the two prisoners, who gave their names as John Wright and Martin Williams, were Colonel Kelly and Captain Deasy, both of whom were notorious leaders in the attempted Fenian rising in Ireland in March last. He produced the warrants which had been out for their arrest since that date. Mr. Nuttall, solicitor, who appeared on behalf of Mr. Ernest Jones, (who was said to have been retained for the defence,) acceded to the remand, and the prisoners were accordingly removed to the cells below. The court, especially the gallery, was densely crowded, and it was observed that the greater number of those present appeared to take an intense interest in the proceedings. A considerable number of strangers crowded the corridors and the open rooms below the court. After the court adjourned, which was about one o'clock, these same persons were still hovering about, as if with the intention of waiting to see the prisoners removed in the prison van. By the time the van arrived, which was not before three o'clock, the narrow street in the rear of the court-house was filled by an excited throng. A considerable force of police was told off to keep the van clear. Meanwhile, the attention of Superintendent Gee had been called to two men of soldierly appearance, who had been seen lounging about all the morning. He saw that they observed him, and from their suspicious and impudent manner—they were humming Fenian airs—he informed Inspector Garner that he thought they ought to be arrested. Inspector Garner and Constable Shaw went forthwith to arrest them. One of them made off and escaped. The other, a tall, powerful man made a desperate resistance. He drew from his breast a long-handled, loose-sprung knife, which, on the blade being thrown forward, became a formidable dagger, the spring tightening with a click. Inspector Garner seized his prisoner by the wrist, and while he was in the act of wrenching the weapon out of his right hand, the fellow aimed a fearful blow with his left, which caught Constable Shaw full in the eye. Some more constables came upon the scene and completed the capture. The man was searched and handcuffed. A few minutes afterwards the prisoners, including the "colonel" and the "captain," were marched between a double row of constables to the steps of the van. A murmur rose from the crowd as the prisoners, who were in handcuffs, were placed inside the vehicle.

The prison van then proceeded through the city in the direction of the jail. The van is divided into separate compartments, each intended for a prisoner. The two Fenians, together with several women and young boys, were the occupants of the vehicle, which was accompanied by eleven policemen, seven besides the driver upon it, and four following in a cab behind. Police-constables Shaw and Yarwood, with Detectives Bronley and Taylor, were on the box; Knox and Connell were behind, and Sergeant Brett was inside the van in the middle compartment. The names of the four officers in the cab were Sergeant Hartley and Constables Trueman, Schofield, and Thompson. With the exception of Brett, who is said to have had a cutlass, none of the police were armed otherwise than with their ordinary truncheons. The van proceeded quietly until they arrived at the railway arch, on the Hyde road, near the clay pits, not far from Messrs. Higginbottom & Heywood's paper works. The

officers in front, when they got to the arch, noticed a crowd of men, consisting of about fifty or sixty, the majority of whom were armed with revolvers. This crowd was composed of men dressed some in cloth and some in fustian; but there were not many in the garb of workingmen; the majority seemed better dressed. They appeared to be acting in concert, and one man, who was known to be a Fenian, named William O'Meara Allen, appeared to be acting as the leader. The moment the van approached the arch Allen shouted to the driver to stop. This was followed immediately after by a volley of pistol shots. One of the policemen in the rear called to the driver to drive on. Simultaneously, however, the Fenians in front fired at the near horse and shot it through the neck, and the driver was knocked off his box with a large stone. Some one then presented a pistol at Bromley and shot him through the fleshy part of the thigh. Taylor was also knocked on the chest by a large stone. A moment afterwards the other horse was also shot. Several of the other officers narrowly escaped being shot, and only saved themselves by ducking their heads as they were aimed at. The progress of the van was, of course, effectually prevented, and the mob set to work to liberate the occupants. About twenty of the assailants formed a cordon round the van, and kept the police at bay. Several bystanders joined with the police, and made a rush; but, as they were unarmed, they could do nothing against a score of desperate men with loaded pistols. In the mean time the remainder of the gang had attacked the van, and were trying to open it. They were armed with hatchets, hammers, and stones, with which they tried to force an entrance. The van, which is a very strong one, appeared to resist their efforts, till at last a party of men managed to haul a very large stone upon the roof, where they began to use it with great execution. They had soon pounded the top of the van into chips. The door was by this time nearly forced open, when the leader, who had a pistol in each hand, put one to the lock, fired it, and burst the door open. The gradually increasing crowd of spectators had in the mean time made several rushes, but were easily defeated by the occasional firing of pistol shots. The police are of opinion that some of the pistols were not loaded with ball, for several times when they were fired point-blank, no effect followed. This might, however, have been the consequence of hasty aim. One of the bystanders, named Sproom, was shot through the ankle, and one of the policemen, Trueman, who was in the cab, and who came up to assist the others, received a shot in the back, which did no more than graze the skin. In addition to this several bullet marks were found on the arch. The leader, Allen, was seen to fire five shots at the van before it was burst open. When the party at the door had forced an entrance, the leader called to the prisoners to come out. They were, of course, locked up in their separate compartments. The leader then asked Brett for the keys, but he refused to give them, upon which Allen fired. Brett was shot in the head, the ball entering at the eye and coming out near the top of the hat. Brett staggered out of the van as soon as Allen had possessed himself of the keys. Allen then released the two Fenians. The whole party then decamped across the fields in the direction of the Ashton road. Besides the two Fenians, four of the female prisoners took the opportunity to escape, their compartments having been unlocked.

Allen was seen going along in the company of Kelly, and was heard by the bystanders to say, "Kelly, I will die for you." Some young men in the crowd, in the employment of Messrs. Heywood and Higginbottom, gave chase. Allen, with one or two others, continued their flight over the fields. At Ashton road a police constable named Bradley joined in the chase and captured one of the party, named Michael Larkin, of Eliza street, City Road, Hulme. Another young man, named Hunter, of Pendlebury, ran down Allen, and laid hold of him. He resisted violently, and threatened to shoot his pursuer with a revolver. Hunter, however, who is a powerful young fellow, closed with him, wrested the pistol from him, and struck him with it several blows on the head, causing a very ugly wound. Other assistance then came up, and the two we have named, with a third, who was afterwards captured, were taken to Fairfield street station. Allen was identified by twenty or thirty witnesses as the leader of the gang, and the man who entered the van and shot Brett.

From the statements of eye-witnesses of all that took place on the Hyde road, we are enabled to add further details of some portions of what is related above. A very acute looker-on, who lives near the railway arch, had noticed a number of strange, suspicious-looking men loitering in the neighborhood all the morning. Some of them visited the neighboring inn, the Railway Hotel, from time to time, and then went across the road into the unenclosed field along the line of railway. They were stilly-built men, and some of them looked as if they had been soldiers. One of them was rather taller than the rest. He was a fair-complexioned man, with a black coat and cap. He appeared to be the leader. Our informant felt sure that "something was going to happen." About four o'clock he was so occupied with watching the men that he did not see the prison van when it was coming up the road. He saw the tall man standing with ten or twelve others on a bank of clay on the opposite side of the road. He put up his hand, and several other men who had been loitering about joined those on the bank, making the number from fifteen to twenty. The tall man, who acted as captain, then drew a revolver, which looked like a new one, and it shone in the light. The other men at once did the same. All the pistols were quite bright. At this moment the rumble of the van was heard, and the leader, as he seemed to be, stepped into the middle of the road, raised his revolver, and fired. At the firing of the shot, the constables were seen clambering down from the van as fast as they could. The other barrels of

his revolver the same man then discharged at the horses. One of the animals plunged about a great deal, and it was afterwards found that it was shot in the back. In the mean time other shots were being fired behind the van, and the officers driven off. By this time a great crowd of people had gathered together. A neighbor ran into his house to fetch a poker, and while he was inside a constable followed him and asked him if he had any arms. This constable (A 76) had been shot at, the ball passing through a portion of his uniform at the left side. As above stated, while some of the assailants kept back the constables and the crowd, others surrounded the van and began to break away into it. This they tried to do, some with hammers, others with an axe head, and others with stones. As soon as one of the panels gave way, the man who from the first had been set to act as captain presented his pistol through the opening, and was heard to demand the keys from somebody inside. The answer could not be heard through the din caused by the battering of the stones and the hammers, and the shrieks of the women who were also in the van. The next thing observed was a captain firing a shot into the van. At this time the constables and some of the crowd made a rush at the van, but fell back on being fired at. Whenever an attempt of this kind was made, there were always some men to jump to the front, so as to keep the way clear between the constables and the van. On one of these occasions a bystander said to a neighbor of his, "They've fired all their shots; let's make another rush." They did so, and the next moment one of them exclaimed he was shot. When the van was broken open, the first thing seen was a constable with keys in his hand (Sergeant Brett) tumbling from the inside down the steps. He was bleeding from the temples, and his head looked as if it had been hit by some of the stones. The captain and some of his men stood at the door, calling out to the prisoners, "Come out." A woman was among the first to get out. Afterwards a tall man with a dark moustache ("Captain" Deasy) came out, and then followed a short, thick-set man, ("Colonel" Kelly.) Both of the men looked as if they were still handcuffed. Nearly all the assailants crowded round, and whilst some of them hurried across the unenclosed fields others remained behind, and fired more shots. The firing seemed quite at random, as if there was now no wish to wound, but only to keep the police at bay. Sergeant Brett was helped into a cab. He was speechless, and seemed dying. Other wounded men were attended to in the same way. The walls of the railway arch were found studded with shot marks. One of our informants saw the mortar fly off in flakes while the firing was going on. He afterwards counted nearly thirty of these marks. He also found a revolver in a neighbor's coal grid. It was quite new, with the exception of all the chambers having been fired off once, or perhaps twice. The injured men were removed to the Royal Infirmary, where Brett died shortly after his arrival. The other persons wounded are expected to recover.

Immediately on the receipt of the intelligence in town, the mayor and several of the city council, with the heads of the police department, assembled together, and consulted as to the steps to be immediately taken for the recapture of the prisoners. A telegram was despatched to the Home Office, and the cavalry regiment in Hulme barracks were called upon to be in readiness to defend any of the police stations if they were attacked. A strong force of police was on duty at each station.

In reply to the mayor's telegram, the Home Office has offered a reward for the recapture of Kelly and Deasy.

The prisoners first captured, including Allen, were removed during the evening, under a strong escort of the 8th Hussars, from Fairfield street station to the central station in Albert street, where fifty of the 57th Foot, under Captain Halstead, remained on duty all night. The revolver which was found on Allen is perfectly new, and similar to the one in possession of Kelly when he was taken last week.

The country was scoured in all directions during the night, and before 11 o'clock twelve to fifteen arrests had been reported from different places in the neighborhood. Some of those who offered resistance got severely punished in the struggle. The last that was seen of Kelly and Deasy was near Clayton bridge. They were seen by some brickmakers to go into a cottage, they then being in handcuffs. When they came out their hands were free. At 7.20 a porter at Heaton Norris saw two men run across the line into the open country. He challenged them, but they did not stop. Inspector Gill and Constable Schotfield took train to Stockport and thence to Hazel Grove, but failed to fall in with them. In the mean time, a hot pursuit was kept up after Allen and others. When the constables overtook Allen he was already in custody, and had already been severely stoned about the head and body by some young men who said they saw him fire the shot that killed Sergeant Brett. Several other arrests were made about the same time. Among the captured are two desperadoes who gave the names of Martin and Gould. These men were conveyed in the first instance to the city jail, where they were so violent that it became necessary to put leg irons as well as handcuffs on them. Thus heavily chained and guarded by a military escort, they were taken in a cab to the station of the division, (Albert street,) where a large and excited crowd remained until a late hour last night. The man who shot at Constable Yarwood, and who was also among those arrested, has been identified by that officer.

Sergeant Brett, who had been nearly thirty years in the force, is highly spoken of as an efficient and trustworthy officer.

It is ascertained that the prison van was preceded on its way from the court in the afternoon towards the jail by a cab containing several of the assailants, who joined those who had previously been seen loitering about the railway arch, and who appeared to take the command.

IDENTIFICATION OF ALL THE PRISONERS.

An exciting scene took place yesterday morning at the A division police station, on the occasion of the prisoners being placed in line for identification. A great crowd of people blocked Albert street, and manifested an intense eagerness to secure a good stand-point whence they could view the probable removal of the prisoners to the city court.

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John Hays, master bricklayer, was in his croft during the *mêlée*. He saw the whole affair. Two of the men whom he now identified were trying to turn the horses' heads towards Manchester, and as they plunged a good deal one of the men fired his revolver into the animal's nostrils, and then both of the men tried to pull the brute on his haunches. Allen at this time was keeping guard, daring the crowd to interfere. After Allen had fired several shots, witness saw him go to a man on the other side of the arch and change pistols. Two other men, whom the witness identified, took a leading part. One of them, cautioning his comrades, said, "Don't shoot, or you'll hit Allen." (At this time Allen was in the van.) Larkin seemed to be taking charge of Deasy in the same way Allen was attending to Kelly. Witness followed the crowd as far as Beswick, and was present when Allen was captured. Allen had then twenty rounds of cartridge for breech-loaders, but had been so hard pressed that he had no time to load.

The following are the names of the prisoners captured and the charges against them:

For wilful murder, William O'Meara Allen and Michael Larkin.

For riot and murder, William Martin, clerk, aged 35 years; William Gould, clerk, 30; Louis Moore, joiner, 56; Patrick Hogan, laborer, 26; John Carroll, laborer, 23; Charles Moorhouse, clerk, 22; John Gleeson, laborer, 42; Patrick Barragan, laborer, 49; Henry Wilson, clothes dealer, 28, at whose house Kelly and Deasy were first apprehended; Michael Joseph Boyland, schoolmaster, 37; William Wells, laborer, 29; Michael Corcoran, laborer, 29; Edward Shore, *alias* Short, traveller, 26; John Butler, weaver, 54; Patrick Cloney,

scavenger, 69; Patrick Kelly, laborer, 35; Michael M'Guire, clothes dealer, Smithfield market, 32; Patrick Dailey, tailor, 36; William Luther, striker, 19; James Woods, hackler, 22.

In the afternoon the prisoners were brought up at the city police court, and after some formal evidence had been given they were remanded for a week.

The two Fenian leaders, at the time of writing, are still at large.

Mr. Adams to Mr. Seward.

No. 1457.]

LEGATION OF THE UNITED STATES,

London, September 23, 1867.

SIR: I have received information that Colonels Nagle and Warren have been transferred from Kilmainham jail, where they have been exposed to the rather severe discipline of that local prison, to Mount Joy, which is more directly under the supervision of the government.

The reason assigned for the delay in an answer to my application for their release is, that the Irish attorney general has not yet returned from a brief absence.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Seward to Mr. Adams.

No. 2058.]

DEPARTMENT OF STATE,

Washington, September 24, 1867.

SIR: I transmit a copy of a letter of yesterday, addressed to the department by Henry Liebenau, esq., of New York, and of the affidavit of the parents of Colonel W. J. Nagle, in which they swear that he was born in Niagara county, in the State of New York. Mr. D. M. Nagle, the father of the colonel, has also addressed a letter to the department stating that his four sons, of whom the colonel was one, all joined the Union army during the late civil war and fought with gallantry in many battles. Two of the sons were killed or died in the service. These facts will be an incentive if any were needed, for all proper exertions on your part for the purpose of obtaining the release of Colonel Nagle.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

C. F. ADAMS, Esq., &c., &c., &c.

Mr. Liebenau to Mr. Seward.

NO. 4 HAMILTON PLACE, WEST 51ST STREET,

New York, September 23, 1867.

HONORED SIR: I enclose with this the affidavit of Mr. and Mrs. Nagle, the parents of Colonel William J. Nagle, showing him to be a native of this State, and hope by the next mail to be able to place in your hands the naturalization papers of Colonel Warren; he was naturalized, as I now learn, in Boston, whither I have sent for the properly authenticated papers.

I greatly regret that from an error in representation, I should have created a discrepancy in regard to the nativity of Colonel Warren, and I can assure you,

like myself, the organization I represent will continue as earnest in their efforts to release our adopted citizens as they have been for the liberation of our native citizens, when unjustly arrested and held by any of the despotic governments of Europe.

Thanking you heartily and sincerely for the prompt attention and earnest action given to this matter by his Excellency the President and your honorable self, please accept my sincere regards, with the assurance of a faithful report to the "Constitutional Union Association" at their next meeting of the alacrity with which their communications have been responded to by the President and yourself.

With the highest respect, permit me to subscribe myself, your very obedient and humble servant,

HENRY LIEBENAU,
Corresponding Secretary C. U. A.

HON. WILLIAM H. SEWARD,
Secretary of State U. S. A.

CITY AND COUNTY OF NEW YORK, ss:

David M. Nagle and his wife, Maria D. Nagle, of the city of Brooklyn, county of Kings, State of New York, being duly sworn, depose and say that their son, Colonel William J. Nagle, now a prisoner in Kilmainham jail, Dublin, Ireland, under the assumption of being connected with the Fenian organization, was born in Niagara county, State of New York.

D. M. NAGLE.
MARIA D. NAGLE.

Sworn before me this 18th day of September, A. D. 1867.

[SEAL.]

JACOB E. HOWARD, *Notary Public.*

STATE OF NEW YORK, *City and county of New York*, ss:

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Jacob E. Howard, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 18th day of September, 1867.

[SEAL.]

WILLIAM C. CONNER, *Clerk.*

HER BRITANNIC MAJESTY'S CONSULATE, *New York*:

I, Edward Mortimer Archibald, esquire, companion of the most honorable order of the Bath, her Britannic Majesty's consul, do hereby certify that Jacob E. Howard, esquire, whose true signature and seal are respectively subscribed and affixed to the certificate herewith annexed, was, on the day of the date thereof, a notary public, in and for the State of New York, duly commissioned and sworn, to whose official acts faith and credit are due.

In witness whereof I do hereunto set my hand and seal of office, at the city of New York, this twenty-first day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.]

E. M. ARCHIBALD, *H. B. M. Consul.*

Petition of the general committee of the Constitutional Union Association.

AMERICAN PROTECTION ABROAD—AMERICA AND IRELAND.

At a meeting of the Constitutional Union Association, held on Monday evening, July 15, 1867, to effect the release of Americans unjustly imprisoned abroad, the following resolution, among others presented by Henry Liebenau, was unanimously adopted.

Resolved, That a petition be prepared and circulated under the patronage of our organization, for the signatures of our fellow-citizens, in behalf of the immediate liberation of Colonel Nagle and Colonel Warren.

DANIEL B. NORTHURP, *President.*

HENRY S. BANCER,
HENRY LIEBENAU,
Secretaries.

To ANDREW JOHNSON, *President of the United States* :

The undersigned, citizens of the city and county of New York and Brooklyn, respectfully represent that Colonel William J. Nagle, a native of this State, and Colonel J. Warren, a native of Massachusetts, good and loyal citizens of our republic, and gallant soldiers of the Union army during our late rebellion, are most inhumanly and unjustifiably imprisoned in Kilmainham prison at Dublin, Ireland: that they were arrested while on a visit to their relatives without the slightest overt act on their part to justify or palliate such cruelty and oppression, and in gross violation of all international laws and the comity of nations.

We therefore respectfully, yet urgently, ask the immediate interposition of our government for their speedy release.

P. S.—When signed, please forward to Daniel B. Northrup, No. 140 Water street, to O. Sloan Holden, No. 645 Seventh avenue, or to Wm. W. Lyons, No. 150 Lewis street.

DANIEL B. NORTHRUP,
149 East Fifty-second street, *President*.
EDWIN H. JUSON,
290 West Fifty-first street, *Vice President*.
CYRUS SCHOONMAKER,
352 East Fourth street, *Vice President*.
HENRY S. BANCKER,
6 Grand street, *Chief Recording Secretary*.
WILLIAM ABBOTT,
62 Pike street, *Assistant Recording Secretary*.
HENRY LEIBENAU,
4 Hamilton Place, West Fifty-first street, *Corresponding Secretary*.
G. C. NEWMAN,
Harlaem, Treasurer.
O. SLOAN HOLDEN,
645 Seventh avenue, *Chairman Executive Committee*.
WM. W. LYON,
150 Lewis street, *Secretary Executive Committee*.
J. M. NAMARA,
230 Delancey, *Sergeant-at-Arms*.
And 169 others.

Mr. Seward to Mr. Adams.

No. 2068.]

DEPARTMENT OF STATE,

Washington, October 3, 1867.

SIR: I have to acknowledge the receipt of your despatch of the 21st of September, No. 1455, together with its accompaniments, being the Times and Star newspapers of the 20th ultimo.

I observe, with regret, though not altogether with surprise, that recent disturbances in Manchester are supposed to have created new obstacles to the liberation of the United States citizens who are held under arbitrary arrest in Ireland. It will be very much to be regretted if these new embarrassments shall be such as to induce her Majesty's government to lend color to the complaint which has been made against them, that they propose to hold indefinitely in custody, without trial or process, citizens of the United States, who have neither committed nor attempted to commit any offence in Ireland, and who are only alleged to have exercised a freedom of speech in the United States which is tolerated by our laws.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 2069.]

DEPARTMENT OF STATE,
Washington, October 3, 1867.

SIR: Mr. West, our consul at Dublin, has recently transmitted another instalment of his correspondence with the local authorities in Ireland, concerning citizens of the United States held in custody, under the suspension of the *habeas corpus*.

I observe that in the case of Robert Kelly, the lord lieutenant informs the consul that the prisoner came to Ireland as one of an expedition, the object of which was to land men and arms in Ireland, in aid of an intended insurrectionary movement in connection with the Fenian conspiracy.

In the case of Augustine E. Costello, the lord lieutenant informs the consul that he is in possession of abundant evidence that the prisoner came to Ireland with other persons for the purpose of taking an active part in the Fenian conspiracy; and that, consequently, his excellency refuses to order his discharge.

In the case of Joseph K. Lawler, the lord lieutenant informs the consul that in February, 1866, this man was arrested in Dublin, in consequence of information having been received of his being actively engaged in the Fenian conspiracy. He was detained in custody until September, 1866, when he was discharged on condition of returning to America, and with the caution that if he should again be found in Ireland he would be re-arrested. The lord lieutenant further states that he was informed the object of the prisoner's return to that country in the beginning of the present year was to take part in the intended insurrection; and, under these circumstances, it does not appear to his excellency that he ought, at present, to take a favorable view of the case.

In the case of John Rooney, the lord lieutenant says he has been informed that the prisoner came to that country as one of an armed expedition, whose object was to assist the conspirators there in attempting the insurrectionary movement. He does not think that it would be consistent with his duty to allow his discharge at present.

In the case of Andrew Leonard, the lord lieutenant states that he is possessed of abundant evidence that the prisoner came to Ireland as one of an armed Fenian expedition, whose object was to join in furthering the designs of the conspirators there. His excellency does not think that it would be consistent with his duty to allow the prisoner's discharge at present.

In the case of Morgan Burke, his excellency informs the consul that this prisoner's complicity with the conspiracy is established by information received from several independent sources, and his excellency, though desirous of being able to comply with the consul's application for the prisoner's discharge, could not feel justified in acceding to it at present.

The lord lieutenant's answers in these cases are substantially the same as the replies before given by him in answer to inquiries in behalf of many other citizens of the United States.

The President is not unaware of the embarrassments resulting from what appear to be repressed insurrectionary or seditious movements in Ireland. He indulges no desire to aggravate those embarrassments, but, on the contrary, he carefully endeavors to avoid listening to any unnecessary and unreasonable complaint of citizens of the United States in connection with those proceedings. A time, however, has arrived when some explanations seem to the people of the United States necessary. The *habeas corpus* has been suspended in Ireland for the long period of twenty months. Frequent arrests and long detentions of citizens of the United States have occurred, who earnestly insist that they have committed no offence and attempted no proceeding inconsistent with a submission to the laws of Great Britain. The arbitrary and indefinite

imprisonment of these citizens naturally, I may also say justly, excites profound concern and sympathy in the United States. That sympathy is not effectually relieved by such general assurances, on the part of the lord lieutenant of Ireland, as we are favored with, that he has evidence sufficient to justify their arrest under suspension of the *habeas corpus*, while this evidence is neither produced nor described. Even though an insurrection or rebellion may still continue a subject of apprehension in Ireland, that fact would seem insufficient to excuse or to justify indiscriminate arrests and long detention of citizens of the United States sojourning in that country, without some examination or form of trial.

Will you seek an opportunity to confer upon this subject with Lord Stanley, in a friendly spirit, and inquire whether in his opinion we may entertain an expectation, either of the restoration of the writ of *habeas corpus*, or of the adoption of such discriminating proceedings as may be calculated to assure the safety of innocent and unoffending citizens of the United States.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

No. 2072.]

DEPARTMENT OF STATE,

Washington, October 8, 1867.

SIR : I have received your despatch of the 23d ultimo, No. 1457, informing me of the transfer of Colonels Nagle and Warren from Kilmainham jail to Mount Joy prison.

Thanking you for your attention in keeping me informed upon the subject, I trust you will follow these cases up with renewed urgency.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1459.]

LEGATION OF THE UNITED STATES,

London, October 10, 1867.

SIR : I have to acknowledge the reception of despatches from the department, numbered from 2051 to 2062, inclusive, of a copy of a printed circular of the 5th of September, and likewise of the President's proclamation of the 3d of that month, to which it refers.

In regard to the main subject of interest, referred to in Nos. 2053, 2054, 2056, and 2058, touching the cases of Colonel Nagle and Captain Warren, I have reason to believe that the government will soon determine the question whether they will bring them to trial. Their release will turn upon it. Lord Stanley admitted to me that my demand was a reasonable one on that point. I think the government would now be glad to get rid of them, if they could be sure of their engaging in nothing new.

But their confidence in the honor of parties entering into any engagement of this kind has been much impaired by the experience of the present year.

Should any further trials of United States citizens, arrested on suspicion,

take place, I shall take care that you are fully furnished with reports of the proceedings, as directed in your No. 2053, of the 13th of September. Had I not supposed they were regularly furnished by the consuls, I should have supplied them before now.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1463.]

LEGATION OF THE UNITED STATES,

London, October 12, 1867.

SIR: I have this morning received letters from Colonel Nagle and Captain Warren, announcing that they stand committed for trial by a commission to be held in Dublin on the 25th instant. They both apply to me for pecuniary aid in employing counsel for their defence. Under the instructions I have received, I shall venture to assume the responsibility of authorizing Mr. West to engage counsel to appear on their behalf.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. F. W. Seward to Mr. Adams.

No. 2074.]

DEPARTMENT OF STATE,

Washington, October 15, 1867.

SIR: I have to acknowledge the receipt of your despatch of the 13th ultimo, No. 1448, relating to your proceedings in the cases of Colonels Nagle and Warren, and enclosing a copy of your notes of the 11th and 13th of September to Lord Stanley, concerning them.

In reply, you are informed that your action thus reported is approved, and that the instructions heretofore given to you indicate the views of the President in relation to these cases.

I am, sir, your obedient servant,

F. W. SEWARD,

Acting Secretary.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1466.]

LEGATION OF THE UNITED STATES,

London, October 19, 1867.

SIR: I have to acknowledge the reception from the department of despatches numbered from 2068 to 2071, inclusive.

In connection with the first two of them it is proper to state that the position of the British government has been so far changed since they were written as to remove the immediate necessity of a remonstrance. Most, if not all the persons named by you, are held for trial in the course of the next week.

In consequence of my consent to authorize the employment of counsel to defend Colonel Nagle and Captain Warren, as stated in my despatch No. 1463, of last week, I learn from Mr. West that a general demand has been made by the others for similar assistance. Messrs. Nagle and Warren also not only required the appointment of separate counsel for each of them, but to dictate who they should be. I saw at once there was a good deal of danger that my proceeding would lead to a large expenditure of the public money by way of incidental benefaction to members of Congress sympathizing with the Fenian agitation and irritating to the government.

I have, therefore, declined to authorize the employment of more than one person, leaving the selection, however, to be determined by friendly consultation with Messrs. Nagle and Warren. I have further pleaded inability to engage the government in the defence of the other persons, without reference to the department for special authority. At the same time I have authorized the consul to employ some one to watch the cases and make report in the event of any injustice done.

Thus far I have had opportunities to observe that the persons implicated in these proceedings have not been without assistance, which I presume to have been supplied from friends of the Fenian association or sympathizers at home. It would be a great relief to them if the charges thus incurred could be shifted upon the United States. Under such circumstances it seems to be incumbent upon me to be cautious in involving the government in pecuniary engagements of indefinite extent without any authority or opportunity of consultation with it.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1467.]

LEGATION OF THE UNITED STATES,

London, October 23, 1867.

SIR: I have to acknowledge the reception of despatches from the department numbered 2072 and 2073.

At an interview which I had with Lord Stanley some days since I gave him the substance of your despatch No. 2049, of 30th of August, and, at his request, consented to his taking, informally, a copy of it. His lordship has now sent me an unofficial note, covering a confidential memorandum from Lord Mayo on the subject, which he desires may be forwarded to you. I therefore now transmit a copy of it.

The main point involved in your suggestions, whether the government here would accept a passport as evidence of citizenship, seems to be evaded by this reply. I imagine that it is feared it may revive the old questions of the right of expatriation, which we had succeeded in putting in abeyance for the time.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[Confidential.]

OCTOBER 17, 1867.

Mr. Seward states, in a letter to Mr. Adams, copy of which was forwarded to me by Lord Stanley, "that it has happened several times that American citi-

zens travelling without passports have been arrested in Ireland and denied the good offices of the United States until they could procure evidence of citizenship, to be sent from the United States."

As this is an important statement, and one that shows Mr. Seward is somewhat in error as to the course pursued, I beg to say that I have carefully searched the correspondence with the American consul, and the letter of which I annex a copy (A) is the only one I can find suggesting that the consul should adduce proof of the naturalization of the prisoner concerning whom he interferes.

Immediately after the passing of the habeas corpus suspension act he was informed (copy letter B herewith) that in the case of an Irish-born subject of her Majesty the government cannot recognize any right of the consul to interfere; and in every such case that occurred during the time Lord Kimberley was lord lieutenant the consul was always informed that, although as a matter of courtesy his excellency would be glad to communicate with him as to any prisoner in whose case he was interested, yet, that if a prisoner be a natural-born subject of her Majesty, he cannot, by any course he may have subsequently pursued in America, divest himself of his allegiance to her Majesty, and must be treated as an ordinary subject, and that therefore his excellency must reserve the right of declining to discuss with the consul of any foreign power the conduct of her Majesty's government regarding such prisoners.

This rule, however, was subsequently relaxed in practice, and the consul has been since communicated with in the ordinary way concerning any prisoner who claims to be an American citizen.

Mr. Murray, D. C. P., however, informs me that Mr. West has frequently told prisoners under his (Mr. Murray's) care that he will not interfere on behalf of a prisoner without some proof of naturalization, and that he has told Mr. Murray himself that such were the instructions he had received from his own government.

A.

DUBLIN CASTLE, May 23, 1867.

SIR: With reference to your letter of the 16th instant, relative to the case of Edward McGinghan, at present confined in Mount Joy prison, I am directed by the lord lieutenant to acquaint you that his excellency has reason to believe that this man is a natural-born subject of the Queen, and that he does not feel it consistent with his duty to release him from custody. I am to add that, in giving you this reply as a matter of courtesy, his excellency thinks it right to point out that no evidence is adduced that McGinghan is a citizen of the United States, either natural-born or naturalized; and that in the case of naturalized United States citizens the production of their papers of naturalization is the only evidence which can be accepted as satisfactory.

T. A. LARCOM.

W. B. WEST, Esq.,
United States Consul, Dublin, Ireland.

B.

DUBLIN CASTLE, February 28, 1867.

SIR: I am directed by the lord lieutenant to acknowledge your communication of the 24th instant, and to inform you that the three persons named by you, viz., John H. and Joseph Gleeson and Bernard McDermott are Irish-born subjects of her Majesty, and that, notwithstanding any course which they may have pursued in the United States of America, they still, in this country, must be regarded as ordinary subjects of her Majesty, bound by the allegiance they owe to her as their sovereign, and they must be dealt with accordingly.

His excellency cannot, therefore, recognize any right on your part (as consul of the United States of America) to interfere in respect of the prisoners in question on the ground of their being citizens of the United States.

THOS. A. LARCOM.

W. B. WEST, Esq.,
United States Consul, Dublin.

Mr. Adams to Mr. Seward.

No. 1469.]

LEGATION OF THE UNITED STATES,

London, October 26, 1867.

SIR: I have to acknowledge the reception this morning of despatch No. 2074, of the 15th instant, from the department, on the cases of Colonel Nagle and Captain Warren.

Although I have instructed Mr. West to transmit to you from Dublin the published reports of the trial, I venture, for further security, to send herewith a copy of the Dublin Evening Mail, containing a report of the charge of the lord chief baron to the jury at the opening.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the Dublin Evening Mail, October 25, 1867.]

THIS DAY.—COMMISSION OF OYER AND TERMINER.

The Commission of Oyer and Terminer for the county and city of Dublin was opened this morning, before the Lord Mayor, the Lord Chief Baron, and Mr. Justice Morris.

The Fenian prisoners, thirty-one in number, were conveyed from Kilmainham jail in two prison vans, under escort of a detachment of the metropolitan cavalry police, and a troop of the 12th lancers. No demonstration took place along the route.

The court-house, Green street, was much crowded, but no inconvenience arose, in consequence of the excellent police arrangements made by Mr. Superintendent Hawe.

The Attorney General, the Solicitor General, Mr. Longfield, Q. C., Mr. James Murphy, Q. C., and Mr. Robert H. Owenes, Q. C., instructed by Mr. Anderson, crown solicitor, appeared to prosecute in Fenian cases.

Messrs. Heron, Q. C., Dowse, Q. C., and Constantine Molloy, instructed by Mr. John Lawless, were of counsel for the prisoners General Nagle and Colonel Warren, whose defence it is stated will be conducted at the expense of the American government.

Mr. Scallan, solicitor, attended on behalf of the Dungarvan prisoners.

Their lordships took their seats on the bench at a quarter past eleven o'clock.

The erier having made the usual proclamation, Mr. Smart, deputy clerk of the Crown, called over the grand panel, when the following gentlemen were sworn on the respective grand juries:

City: William Graham, (foreman,) William Longfield, Andrew W. Ferguson, Robert Long, John De Burgh Morris, John Judkin Butler, Bernard Cannon, James Malins, Samuel W. Tyndall, Thomas French Williamson, Edward O'Connor, Caleb Palmer, Thomas Ord, George Morrow, Edward Leachman, Patrick Langan, Nicholas Tallon, John McMahon, Charles Hely, William McGuire, Joseph R. Kirk, William McDowell, and Andrew Joseph Nowlan.

County: Alexander Terrier, (foreman,) Edward Walpole, Ashley La Touche, John Richardson, John Chambers, Henry Peile, John Malins, David Alexander, Frank Barrington, Hugh Browne, Robert Close, Trevor Hamilton, Richard Salter, William Reynolds, Daniel Sullivan, George O'Neill, John Fry, Joseph Johnstone, Charles D. Ingham, James Gillker, Charles Goodwin, James Whyte, and George Lynch.

The lord chief baron, addressing the city grand jury, enumerated the various items of the calendar, and observed that they were all offences of an ordinary character, and such as might be expected to occur from time to time in a large population like that of the city of Dublin. There was only one exception, and that was a case in which a person was charged with what was called Fenianism. With the particulars of that case he was unacquainted, but as he would have to address some observations to the county grand jury, he would request their attention to them. Having given the usual instructions as to the duty of a grand jury in respect to the finding of bills, the lord chief baron turned to the county grand jury and said that the ordinary offences appearing on the calendar were not more numerous than might be expected. There were, however, several cases of what was called treason-felony, an offence created by a statute passed in the year 1848, for the purpose of mitigating the law of high treason in certain cases, and reducing it from a capital offence to a felony punishable by transportation or imprisonment. Shortly after the passing of that act of Parliament, on one of the first occasions on which it became necessary to resort to a court of justice for the vindication of the law, it fell to his lot to make an exposition of the statute to a grand jury

sitting in that box. Unfortunately, since then, and within the first two years, the enactment had been the subject of exposition from the bench, and in several instances from the bench he now occupied. The law was so defined, in terms so free from all ambiguity, that at this moment, and after the experience that had been had in courts of justice since he had so addressed the grand jury, he did not think it necessary to refer to the former state of the law, or to the general scope of the amending statute. By the third section of the treason-felony statute, it was provided that if any person whatever, after the passing of the act, should, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious Queen from the style, title, dignity, or royal name of the imperial Crown of the United Kingdom of Great Britain and Ireland, or of any other of the dominions owing obedience to her Majesty, or should compass, imagine, invent, devise, or intend to levy war against her Majesty by force or constraint to compel her to change her counsels, or overawe both or either house of Parliament, or to move or stir any foreigner or stranger by force to invade the United Kingdom or any other of her Majesty's dominions, and such compassing, imagination, device or intention should express, utter, or declare by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every such person so offending shall be guilty of treason-felony, and shall be liable to be transported for the term of his natural life, or for any period not less than seven years, or be imprisoned for a period not more than two years. The punishment of transportation having been superseded by penal servitude, the penalty, instead of seven years' transportation, was now five years' penal servitude. They would observe that the offence was the compassing, imagining, devising, or intending to deprive or depose the Queen from the Crown of Great Britain and Ireland, and this was the portion of the statute which became material for their consideration. The compassing, imagination, device, or intention was to be proved by one of three things: by publishing any printing or writing; by open or advised speaking—but this no longer existed, for the act in respect of it expired in two years; or by the doing of overt or open acts. Two things were required: in the first place the party must compass or design the object stated by the legislature to deprive or depose the Queen from the style, dignity, honor, and royal name of the imperial Crown of the United Kingdom of Great Britain and Ireland; and secondly, it was essential that the compass and design should be expressed by an overt act or deed. It was essential for the protection of the whole people for the maintenance of good order and good government, and the security of life and property, that the monarch should be safe in the possession of his royal authority, and therefore the compassing or devising anything that affected his royal authority, either under the law of treason, by affecting his life or person, or under this statute, by affecting his power, was an offence punishable by severe penalties. But while the law was for the protection of the monarch and the people, it was essential, in order that no man should be unjustly convicted, that certain requirements of that law should be complied with. Accordingly it was enacted that the compassing, design, and so forth, should be proved by some overt act on the part of the person accused. Now, the overt or open acts by which he might declare the purpose of his mind were as various as the contrivances of mankind to reach the objects they might have in view. They were not and could not be defined by the law *a priori*, and could only be stated when judges and juries came to consider them. As their good sense would suggest, if a man conspired with another to effect a certain object, nothing could be plainer than that the object for which he conspired was the object which he designed. In this instance it was charged that the conspiracy which these men entered into had, for its design, the deprivation or deposition of the Queen, and in order to establish this proposition it was alleged that they combined together to establish an Irish republic. As an Irish republic and the Queen's government in Ireland could not co-exist, it was plain that any persons who conspired to establish a republic intended to depose the Queen, and if this were proved it was an overt act of treason going to sustain the indictment which would be submitted to the grand jury. Again, a variety of means might be made the subject of planning and conspiring to effect these objects. If there were a confederacy existing in America: if there were a confederacy existing in Ireland; if these confederacies be for one and the same object; and if, in fact, they constituted one and the same confederacy, comprising various persons, more or less numerous, some of them in America, some of them in Ireland, some of them in England, and some on the high seas, all engaged in the one common design of effecting the establishment of a republic in Ireland, each of them, by the fact of membership in the confederacy, did an act which testified a design to do that which was the object of the confederacy. But mankind could not do these things without taking means for their accomplishment; and if it formed a portion of the means devised and planned for the carrying out of the object of the confederacy to import arms into Ireland for the purpose of being used in the establishment of a republic, to come in more or less numbers to Ireland for the attainment of that object, to induce others to associate with them for the purpose of making war and invading this country with the view of raising an insurrection, to put arms into the hands of people here, to meet in council or in public assembly for the purpose of enlarging their own numbers or increasing the energy of their associates, or encouraging them by precept or example, acts of that kind would be overt acts or deeds indicating a design or purpose to depose the Queen. There were several overt acts charged in the indictment, and it would be for the grand jury to say whether or not they *prima facie* amounted to proof of the

existence of the design alluded to in the act of Parliament. Having referred to the law bearing on the liability of every member of a conspiracy for the acts of his co-conspirators, his lordship instructed the grand jury as to the proof they should require of the alleged overt acts, and told them that where the offence charged was one so grievous as that of an attempt to overthrow the established government of the country, they were in point of law to give the cases not alone a careful but such a charitable consideration as was consistent with common sense. It was impossible to consider such charges brought before a court of justice without some feelings of amazement that such designs could be entertained by reasoning men, still more that they should be charged to-day against men of education, still more that they should be charged against men of military habits and military knowledge. This country was united to England, one of the most powerful states in the world. England had at its disposal a vast navy and a large army. It was a nation thoroughly organized with magistracy, with police, with troops, with commanders, with a steam navy calculated to convey, in the course of a few hours, almost any amount of troops across the small channel that divides the two islands. In Ireland itself there existed a population, he believed—and he was sure they who knew what was passing around them did so too—the enormous majority of which were perfectly free from all sympathy with the confederacy. There was hardly an interest that could exist in a civilized community, the interest of property or life, that was not arrayed against the designs of the conspirators. They in every town in Ireland were engaged, and largely engaged in trade, and upon them the agricultural population almost depended for its existence, for they all know that the largest portion of the transactions of the country took place between the inhabitants of the towns and those of the country districts. The interests of the agricultural population were consequently bound up with those of the trading classes, for whom a state of tranquility was a matter of essential importance. Nay, more. In the complicated society in which we exist credit is absolutely essential in carrying on the ordinary transactions of life, and in view of an insurrectionary movement having for its object the levelling of the government of the country, and calculated to diffuse confusion and disorder, credit shrank and disappeared. The Fenian conspiracy has imperilled the existence of order in the country, and induced confusion, which must have a most baneful effect upon trade and commerce. The experience of the past had proved how entirely free from all participation in schemes of this kind were the great mass of the inhabitants of Ireland. The country itself, from circumstances which could not be referred to from that bench, was divided in opinion, and therefore to obtain united co-operation for such a design as this was one of those wild dreams which sane men could scarcely entertain.

Again, it was well known that the island was not fortified, and consequently was not tenable by an invading force for any time. When it was alleged that persons should organize a scheme of this kind without a navy, without an army, without arms, without artillery, and without any settled organization or unanimity among the people themselves, and intend to sever the connection between England and Ireland, and throw off the authority of the Crown of Great Britain, and do this in face of the whole force, military and naval and social, that England would bring against them, constituted another illustration of the old adage, "Truth is more wonderful than fiction."

In making these observations to them, which he did in the same spirit in which similar observations had been urged by those in whom all classes should have confidence, the grand jury would understand him as telling them that they were in no way to be considered as affecting the interests of the persons charged here, and whose cases they would now proceed to inquire into. After some further observations the grand jury retired to consider the bills submitted to them.

FINDING OF TRUE BILLS.

The grand jury found true bills for treason-felony against the following prisoners: John Warren, William Nagle, Octave Fariola, Augustine Costello, William Halpin, Patrick Nugent, John Fitzimmons, Frederick Fitzgibbon, and John Cade, the alleged Fenian prisoners.

OCTAVE FARIOLA having been placed at the bar, Mr. Lawless handed in an affidavit to the court, which was sworn by the prisoner, upon which to ground an application for a postponement of the trial.

The attorney general stated that more than two months ago the prisoner had been informed that the application could not be complied with on the part of the Crown.

Mr. Lawless said that he had been away out of the country, and that the prisoner had no means of communicating with him until his return.

The chief baron suggested that the matter should stand until Monday. In the mean time the attorney general could consider what course he would adopt.

The suggestion of his lordship was complied with.

The attorney general then proposed that William Halpin should be put forward.

This was accordingly done.

The chief baron asked if the prisoner was represented by counsel.

It not appearing that he was, the chief baron suggested that some prisoner who was represented should be put forward.

The attorney general said he wanted to see what course the prisoner would take.

The chief baron thought it would be better to let the prisoner stand back until Monday. The attorney general said he would ask his lordship to tell the prisoner to be ready for his trial on that day.

The PRISONER. I am ready now; any time at all.

Mr. HERON. I understand that the prisoners for whom I am concerned would not be arraigned until Monday.

The chief baron said that it was proposed to arraign them now. If any question arose on the arraignment, he would let it stand until Monday, when Mr. Justice Keogh, whose term it was at commission, would be in attendance.

Mr. Heron was of opinion that a question would arise. He would, therefore, ask that the prisoners for whom he and Mr. Dowse were concerned should not be arraigned till that day.

The ATTORNEY GENERAL. That does not apply to the prisoner at the bar.

The chief baron thought that, as the prisoner was *inops consilii*, the same rule ought to apply.

The attorney general said he had better state in court that he proposed to try the prisoner on Monday morning.

The prisoner asked for a copy of the indictment, and was informed by the attorney general that he would be furnished with it forthwith.

He was then removed.

The trial of some minor cases was afterwards proceeded with.

Mr. Seward to Mr. Adams.

No. 2082.]

DEPARTMENT OF STATE,
Washington, October 31, 1867.

SIR: Your despatch of the 19th of October, No. 1466, has been received. I learn with satisfaction that her Majesty's government has so far changed its position in regard to citizens of the United States arbitrarily arrested, under a suspension of the *habeas corpus*, in Ireland, as to concede them a prompt and, as I hope the result may prove, a fair trial.

Under these circumstances the execution of my instructions, 2068 and 2069, may properly be suspended.

Your decision to authorize the employment of only one person to act as counsel in the cases of Colonels Nagle and Warren, leaving the selection, however, to be determined by friendly consultation with the accused, is satisfactory. Your further decision to refer to this department applications for the employment of counsel in other cases is judicious, especially so since you have authorized the counsel to employ some one to watch the case and report in the event of any injustice being done. This last mentioned proceeding is approved.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1472.]

LEGATION OF THE UNITED STATES,
London, November 1, 1867.

SIR: I have the honor to transmit a copy of the Dublin Evening Post of yesterday, containing a further report of the proceedings in the case of John Warren, now on trial for treason felony at Dublin.

After accepting the offer of assistance by counsel in his defence, it appears that Captain Warren has preferred to attempt to raise a question of citizenship in connection with a demand for a jury composed one-half of aliens, under the provisions of the common law *de medietate lingue*. It is evident enough that he expects by this to effect the object so long desired by parties connected with

these movements in Ireland, of raising a difficulty between the two countries on the question of the right of expatriation.

The claim of a jury of half foreigners appears to rest entirely upon the special provisions of the English law, and is stated to be recognized nowhere else. I cannot find that it is admitted in the United States federal courts. Indeed, from the very limited authorities within the control of this legation, I find that the service of an alien at all on a jury, if taken notice of and challenged in season, has been rejected as inadmissible. Hence it does not seem as if any question could be raised, by this proceeding, on the ground of international law. It seems to be a privilege which the courts of Great Britain may be expected in courtesy to concede, but the refusal of which does not constitute a ground for reclamation as a wrong done. Captain Warren seems to have overlooked this important distinction, which would appear to render the other question, whether he be an alien or not, of secondary interest, at least in his own case, compared to his defence.

The first effect of this proceeding is that Captain Warren is deprived of the assistance which he might have had, and disabled from taking as much advantage as he could of any legal defects in the prosecution. I am not advised of the course proposed to be taken by Colonel Nagle.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the Dublin Evening Post, October 31, 1867.]

THE FENIAN TRIALS.

COMMISSION COURT—THIS DAY.

The lord chief baron and Mr. Justice Keogh took their seats on the bench shortly after ten o'clock this morning, and proceeded with the trial of Colonel John Warren. A large number of policemen were stationed in the court, but very few persons were in the gallery. As on the previous days, the Fenian prisoners were conveyed to the court-house in the prison van, guarded by a troop of dragoons and an escort of mounted police.

The prisoner being put forward and the jury having answered to their names, Daniel Buckley was sworn and examined, and deposed as follows: I was born in Ireland; I am 25 years of age; I was born in Munster; shortly after my birth my parents emigrated to America; I remember being in New York when very young; I enlisted in the northern army in 1861; I served through the American war, and I left the service in August, 1865; I became for a time a Fenian after leaving the army; I pledged myself not to divulge the objects for which the organization was established, namely: to revolutionize Ireland and change the government, by making Ireland a republic; I paid subscriptions at the rate of ten pence a week for a year or more; last year I joined an expedition; I went with other members to the State of Maine; I came back again; in February of this year I was introduced in New York to Colonel James Kelly; he was at that time the head of the military department in New York; Kelly told me of an expedition, but he did not tell me when it was to start; it was a Fenian expedition, and I agreed to join it; I met Kelly frequently at the headquarters in New York; I took an oath that I would not divulge the secrets of the expedition; I went to a house in East Broadway, for which I received an intimation from Colonel Kelly through John Hogan; I was to meet others in connection with the expedition: that was on the 12th of April in the present year; I was told to follow others to the foot of Canal street in New York; I was not told what I was to do there; I went to the place, and met those whom I had parted with in East Broadway, coming in ones, twos, and threes; I had met about forty persons in East Broadway; I had no baggage with me; some of the others had baggage; Canal street opens on the river; when we got there we went on board one of the steamers; the steamer then left the quay and went to the outer bay of New York, a distance of fifteen or twenty miles; we remained there from the 12th until the 13th of April, and all that time we stopped on board the steamer; James Kelly and John Hogan had spoken of a vessel which was to convey arms; the vessel not appearing, we intended going back to New York; we met on the way a two-masted vessel, and we steamed close to her and jumped on board; she was called the Jacknell Packet; about four hours after our going on board she set sail; she was not very

well rigged, and her crew consisted of four sailors, two officers, a cook, and a boy, besides the captain; I learned that we took the course usually pursued by West Indiamen, in order to avoid capture; I don't recollect seeing any colors, but during the voyage she hoisted English colors, especially when hailing vessels; the West Indian tack was changed after the 14th, and on the 15th we pursued the ordinary European tack, but a little more south; we continued that tack; a man named General James E. Kerrigan was in command of the expedition: he had been a Colonel in the American army; I knew him as a congressman of the United States of America: I did not know he was connected with the expedition until I got on board; I obtained one commission in New York from Colonel Kelly, and another on board from General James Kerrigan: I threw one of them away, and the other I did not bring with me; I got the rank of captain; there were others—Colonel Nagle, Colonel Warren, Colonel Taylor, Colonel Prendergast, Colonel Cecilian, Colonel Jerein, Colonel Doherty, Captain Costello, Captain Greene, Captain W. Simmons, Captain Kane, Captain Leonard; lieutenants Fitzgibbons, Roche, William C. Nugent, James Lawless, Cade, alias Murray, L. Doyle, Daniel Lee, Thomas Fernan, Patrick Nugent, James Coffey; there were more whom I don't recollect; I got my commission about an hour after getting on board the vessel; I saw Kerrigan giving commissions to other parties: I did not see the prisoner getting his commission; my commission was signed by Colonel Kelly and by Captain Hogan; its contents were: "To all whom it may concern, greeting, we by these presents do appoint (name) in the army of the Fenian Brotherhood;" it was in print, and on paper: nothing happened until Easter Sunday, and then the green flag with the sunburst was hoisted before noon; at its hoisting there was a salute fired; after which the order delivered to Kavanagh (captain) to land the arms in Ireland, was read: the order was signed by Captain Powell and Colonel Kelly; the arms were to be landed if possible at Sligo, or wherever else convenient; the vessel also received a new title—"Erin's Hope;" she was christened by Kavanagh; the officers were present when the order was being read and the vessel christened: Warren was there; we had arms of different kinds; we had Spencer repeating rifles, seven shooters; we had Enfield and Austrian rifles; we had some breech-loading rifles: those were the larger arms; we also had revolvers; the arms were packed in large boxes; the boxes were put between decks; the vessel was well laden, and was reasonably deep in the water; she had no other cargo; we had some ammunition made up in cartridges which were not carefully packed: there were about a million and a half rounds of ammunition; I should say there were some 5,000 stand of arms on board; there were three pieces of artillery: they were fired as a salute when the green flag was hoisted; they threw three-pound shot or shell; they had no carriages; the cases of arms were opened during the voyage, and the arms were placed so that they could be easily distributed; they were then rearranged in the same boxes: it was stated in New York that the arms were to be landed in Ireland for the purpose of distribution; I had never seen the prisoner until I went on board the brig; there was a discussion on board to the effect that the arms were to be given to men in Sligo to revolutionize the province of Connaught; when we left New York Colonel Prendergast said we were sailing in a vessel which had no clearing papers; this fact nearly occasioned a mutiny on board; General Kerrigan took Prendergast's command from him on that account; he afterwards returned it, after two or three weeks: we sighted land in the month of May; we took a pilot on board named Gallagher; he came out to meet us: in fact, he followed us for hours; that was two miles from land; in the bay of Sligo another person came on board and was received by Captain Kavanagh; he went on the quarter-deck with Kavanagh, and then they went to the cabin, where all the colonels were assembled; I heard from Costello that this man's name was Burke; he remained on board about an hour; it was dusk when he came on board; after an hour he went on shore in company with Colonel Devin, Colonel Phelan, and Colonel Prendergast; two others of the party had also landed—Colonel Doherty and a man named Shea; they went to Sligo very early in the evening—about an hour and a half before Burke came on board; Gallagher was taken down to the cabin by the captain, and I was about three feet from them; I was at the door leading to the cabin between decks; Gallagher and Kavanagh went into the cabin: the colonels were also there: Warren and Nagle were there, and I heard them conversing; I heard the pilot and Kavanagh talking; the pilot made an excuse for not taking the Fenian oath; he said he was too old; I also heard the pilot take an oath, which was administered to him by Colonel Nagle; the oath was that he would not divulge what the cargo consisted of; the pilot then went on deck; Doherty and Shea did not return; Colonels Prendergast, Phelan, and Devin did not return either; the day on which Burke came on board a loaded pistol exploded in my hand; I was cleaning it; James Coffey alias Nowlan and John Connor were wounded; Connor was wounded badly in the ankle, and Nowlan was wounded in the leg; those two men went ashore in company with a man named Pat. Nugent; Gallagher went also in the same boat with those three men; when the boat left the ship we were near the land; next day a council was held in the cabin; all the officers were present; General Kerrigan stated that it was impossible to attack the town of Sligo; that the Fenians were quiet lately; before Burke came on board it had been determined to attack the town of Sligo, but on his report this resolution was changed; Warren was present at this council; Kerrigan also stated that Burke had ordered the captain to sail for Cork; the vessel then put to sea; the council at which it was determined to attack the town of Sligo was held before the agent came on board; all the officers were present; after

putting to sea the vessel steered for Cork, and we arrived at a place called Ballimore, in Cork; before arriving we held a council, at which all were present except the crew, General Kerrigan, and Colonel Warren, who did not acquiesce in the summoning of the council; the result of the council was that they were to turn the ship's head towards the western islands in order to reprovise her; our provisions were short at that time; the captain was not at the council; there were notes taken at it by Nagle, by Costello, by myself; I threw my notes away before I came ashore: as the expedition had failed, it was debated whether it would be better to return to the United States and lay before the Irish the experience they had gained, or land in Ireland; the former course was agreed to; I communicated this resolve to the captain in the after part of the vessel; that resolution was changed; when I presented Captain Kavanagh with a docket exonerating him from any blame in the matter, he turned around and asked if they would not land anywhere he might select; it was agreed that they would land anywhere he chose; Kerrigan and Warren were made acquainted with the first resolution of the council: they were in the cabin while the council was being held on deck; the determination of the council was drawn up in writing and signed by the officers: Warren signed it: this document is in the possession of Captain Kavanagh, in New York; Kavanagh proposed to rescind this resolution, and Warren was agreeable to that course: we landed in Ireland two or three days after; we landed in a fishing boat within a mile or two of Dungarvan; it was on the 1st day of June, in the forenoon; about twenty were landed with us: the crew of the smack consisted of several men; we got on board the smack about four miles from shore; she beached in three and a half feet of water; we had to jump into the water; we were up to our arm-pits; when we landed I went with Costello and Lawless, and shortly afterwards I was arrested; there were two magistrates present when I was arrested, one of whom I now recognize in court—Mr. Fitzgerald; the Costello who was with me at this time was a different man from he who introduced me to Colonel Kelly.

Five other prisoners were then put forward.

Examination resumed:

I see those five men; they are Colonel Nagle, Colonel Warren, Captain Costello, Patrick Nugent, James Coffey *alias* Nowlan, and Lieutenant Fitzgibbon; all the prisoners were brought up to Dublin excepting five.

The chief baron asked the prisoner if he wished to ask the witness any questions.

The prisoner said he did not.

The chief baron said he had some questions to ask the witness, but he would defer them for the present.

The court then adjourned for a short time.

SECOND EDITION.

On the reassembling of the court, MICHAEL GALLAGHER was examined by Sergeant Barry:

I am a pilot in Donegal; I recollect in May last seeing a brigantine coming into Sligo bay; it was in the evening; I was on shore at the time; I saw her up to six o'clock that evening, and next morning about eight o'clock; she was then leaving Sligo bay and coming towards Donegal; she was then about six miles off; I then boarded her in a small boat, about 12 o'clock noon; I had six men with me; I went on board myself, and saw a man on the quarter-deck, who told me he was from Spain bound for Glasgow, with a light cargo; he also said he landed the captain the night before at Sligo to get provisions; he asked me if I was the pilot, and on saying I was, he gave me charge of the vessel, I agreeing to pilot her for two guineas; he then called me down to the cabin; I went down and I found some men there; I saw that man there, (pointing to the prisoner;) there was another man there whom I would know; he asked me if I was a Fenian, and I said not; the man in charge of the ship then said "swear him;" I said, for God's sake don't swear me, for I have a large family; the man in command then took a loaded pistol and told me to take the book; I had to take it and swear as he told me. (Colonel Nagle was put forward.) That is the man who handed me the book and tendered the oath; I repeated what he said; I swore that I would tell no one of what I had seen, and that if I noticed anything in the ship I would not report it; neither was I to give a description of the vessel; one of the men gave me five or six shillings, when I spoke about my wife and family; I then went on deck and took charge of the vessel; the hatches were shut down and there were only six or seven men on deck; when I came on deck my crew went away in their own boat; I sailed the vessel to Mullaghmore, keeping within about half a mile of shore; this is in Donegal bay on the Sligo side; I then steered for St. John's Point, on the Donegal side; when I saw that the coast guards did not come out I let the vessel drop down to Hillybegs; I then learned that it was near six, and that I was to take the vessel to meet the captain; I then took the vessel to Streedagh and there was no sight of the captain; about ten o'clock I saw a hooker coming down; she came astern of the ship, and some conversation took place between the men in charge of the two vessels; the man in charge of our vessel took the man commanding the hooker on board the ship and they went down to the cabin; they then came up on deck, and I asked was that the captain; he told me to mind my own business and watch the vessel; I said I would

watch the vessel no longer, and I went to the stern and jumped into the boat; the man in charge told me to come on board again, and said that he had two wounded men to send ashore; I forgot to state that I heard of the men being wounded two hours after I went on board; I was told that they had a fight; I was dragged up on board the brig, and I remained on board till one o'clock in the morning, and then I was told to put the vessel in towards land in order to land the two wounded men; I did so, and the two wounded men were sent ashore in a boat, besides three others and myself; the boat struck on the sand, and one of the wounded men was carried up to the beach; I then went away. (James Coffey, *alias* Nolan, and Patrick Nugent were then put forward.) Those are the men who were wounded.

The CHIEF BARON (to the prisoner.) Do you wish to ask the witness any questions? PRISONER. For the sake of law and justice, I wish to call your lordship's attention to this man's information given in May last and his evidence now; there are great discrepancies, and his evidence is a tissue of perjury and falsehood.

The CHIEF BARON. We shall examine the informations, and question the witness on those matters in which the discrepancies occur.

The court again adjourned, and, on reassembling,

MICHAEL GALLAGHER, the pilot, was recalled.

The chief baron asked the prisoner if he wished to have the whole of the evidence read, or only that portion of it which seemed to be material.

The prisoner said that, merely for the sake of justice, he would wish his lordship to question the witness as to that portion which seemed material.

The chief baron then read a portion of the witness's information, in which he stated that he told all he knew to the coastguardsman, and that he knew nothing more about the vessel.

The witness said that he swore that to the magistrate in order that he might not break the oath that he took in the cabin.

The prisoner said that the witness, in his information, swore that he did not know what the cargo of the vessel was, and in his evidence now he swore that the vessel contained a cargo of fruit.

In reply to the chief baron, the witness said that he did state to the magistrate that the vessel contained a cargo of fruit.

The CHIEF BARON. In the information of May the discrepancies occur, but perhaps they may be rectified in the information of June and October.

The PRISONER. In the information of June he stated that he did not ask the name of the captain, nor did he learn it; and in that of October he says, "I asked the captain's name, and was not told it."

The chief baron asked the witness how he could reconcile these statements.

The witness, in reply, stated that it might have been put down in such a style, but, as he could not read, he was not aware of it.

The prisoner pointed out other discrepancies in the witness's informations, and especially where the prisoner, after leaving the vessel, did not say a word to the coast guards about the vessel.

The witness said he did tell the coast guards.

The PRISONER. That man is a perjurer, and ought to be in the dock where I now stand.

The CHIEF BARON. You are not at liberty now to say that.

The prisoner said the witness was in the same prison with him, and, after being liberated, was again brought to the prison to identify him. He submitted that the whole story was concocted, and that those men had not a foot to stand on. He also said, "Ignoring the jurisdiction of the court, I must thank your lordship for your kindness."

The CHIEF BARON. You are under no obligation to me; I am simply doing my duty to the Crown.

DANIEL COFFEY was then called, and, on coming on the table, he said he should refuse to give evidence, on the ground that it would criminate himself.

The chief baron said he should be sworn, and that then he was not bound to answer any questions that might criminate himself.

The prisoner protested against forcing the witness to give evidence.

Mr. LONGFIELD (to the witness.) Did you become a Fenian in America? I decline to answer the question. Did you embark on board the Jacknall? I decline to answer. Were you wounded at any time? I decline to answer.

The chief baron said the questions could not be pressed.

Mr. Longfield refused to question the witness any further, and he was told to leave the table.

JOHN HOCKEY was the next witness called.

The prisoner stated that the witness was present in court during the whole of Gallagher's examination.

The chief baron said he should not have been present; it was usual for crown witnesses not to remain in court while evidence was being given.

The witness was examined by Mr. Murphy, Queen's counsel, and merely stated that he

was the third man that went on board the vessel from the boat, and that he went to the galley to warn himself. He knew nothing about the vessel or her cargo.

The prisoner refused to ask the witness any questions.

DANIEL JONES was next examined, and stated that he brought a car to Streedagh and conveyed the wounded men to the infirmary.

JOSEPH CLARKE, a coast guard, was examined, and deposed that he arrested a man on the shore and brought him to the coast guard station. He also landed the two wounded men.

On three of the prisoners being put forward, the witness identified Nugent as being the man he took into custody.

Examination resumed: "I saw a vessel on the day named, in the offing; she was a brigantine; she was two miles off the Streedagh station. I had a conversation with Gallagher in the morning; I asked him who he was; he said he was a pilot; he said he was after landing from the brigantine, and that she was a Spanish vessel bound to Glasgow; he said he did not know what cargo she had. He was out fishing, and he boarded her; he was asked, he said, to take her to Killybegs; he took her to Streedagh, and then the captain said they would land the pilot and proceed to Glasgow themselves. He said nothing more."

BERNARD BURKE, a coast guard, on being sworn, said he was on duty in Streedagh on the morning of the 25th of May last. He saw a horse and cart, and he went after them; it was going in the direction of where the wounded men were found; the man who had charge of the cart was named Michael Bruen, and the civilian was named Jones. I asked the wounded men who they were. There were a number of foot tracks in the sand to the water's edge. Both men had bandages on them; I got them conveyed to the watch-house. [Identifies Coffey as one of the wounded men.] The evening before I saw a brigantine coming over from the Donegal shore; she had her sails set.

The witness was under examination when we went to press.

Mr. Adams to Mr. Seward.

No. 1476.]

LEGATION OF THE UNITED STATES,

London, November 5, 1867.

SIR: I have the honor to transmit copies of London Times containing a report of the trial of the persons charged with the murder of a police officer in the prosecution of an attempt to rescue two prisoners at Manchester. In the course of the remarks made by two of these men, I perceive that they declare themselves American citizens, and complain that no attempt was made by me to interfere in their behalf.

Of one of these parties, Shore, or Shaw, I have never heard anything before, either directly or indirectly. So far as I know, he never made a sign to me of any kind.

With regard to the other man, Gould, he proves to be Michael O'Brien, the person who was arrested and tried at Liverpool for being accessory to the possession of some government rifles traced into the hands of the Fenian Irish in that place. As the evidence upon his examination seemed to me quite insufficient to justify the charge, I authorized Mr. Dudley to employ some one to protect him, and guard against the risk of political prejudice prevailing against him on account of a suspected connection with the Fenian agitation. The trial, however, was very fairly conducted, and the evidence not proving sufficient, as I supposed, he was acquitted and released. It was, however, quite strong enough to throw a doubt over his purposes, and to justify Mr. Dudley, the consul, who saw him, in giving him a friendly caution to avoid all further risks by returning at once to America.

In the present instance Mr. O'Brien wrote to me again soliciting assistance. But the circumstances seemed so entirely changed, the charges brought of so purely a criminal nature, and sustained by such strong evidence, that it did not seem to me to be a proper case to attempt to interfere with the usual course of law. It admits of little doubt that he was one of the chief parties engaged in the rescue by violence, and as such liable to suffer the penalty of the law. I presume at least three of the five persons convicted will be executed.

I learn from Mr. West that the trial of Colonel Nagle will be transferred to Sligo and postponed to the spring. This is alleged to be on the ground that the evidence to fix upon him, as an alien, an overt act, must clearly prove this act to have been committed within the British jurisdiction. Thus a clear distinction appears to be made between him as a native of the United States, and Warren, who is a naturalized citizen. In this connection much stress is laid on the doctrine of our courts, and works of high legal authority upon the indefeasibility of allegiance. It is much to be regretted that on this point there should always have been some conflict between the established policy of the executive department and the ruling of the federal judiciary.

There is a leader on the subject in the London Times of to-day, which I send herewith.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the London Times, October 29, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Monday.*

The trial of the persons charged with the murderous attack upon the police van at Manchester and the rescue of Fenian prisoners was entered upon this morning at ten o'clock. The special commission had been formally opened on Saturday afternoon by Mr. Justice Mellor, who, with Mr. Justice Blackburn, will preside at the special assize, and at the sitting of the court to-day the grand jury roll was at once called over. The leading facts connected with the outrage are so fresh in public recollection that little more is needed than a recapitulation of dates. It will be recollected that on September 18 Kelly and Deasy, two Fenian leaders, who had been arrested about a fortnight previously, and already remanded upon two occasions, were in process of removal with other prisoners in the van from the police court to the city jail, when the organized attack took place which resulted in the death of Sergeant Brett and the wounding of other police officers. The numbers of the attacking party were variously estimated, but appear to have been about forty altogether. Arrests in excess of that number were made, but some of the persons taken into custody upon suspicion were discharged, and the names of but 26 prisoners remain upon the special calendar. The preliminary investigation before the magistrates commenced on September 19, and extended, with adjournments, over a period of nearly three weeks. Eight or nine days were actually occupied in taking evidence, and a period at least equal in duration is assigned by public expectation to the sittings of the special commission. With a view, doubtless, to attract as little attention as possible, the prisoners were removed shortly after 8 o'clock this morning from the Salford or county jail, where they are now confined for greater safety, to the precincts of the court-house. This was accomplished under strong military escort. A troop of hussars, with swords drawn, preceded the van, in the immediate vicinity of which marched two companies of the 72d Highlanders, with fixed bayonets, and the procession was closed by another party of hussars. Upon the front of the van five police constables were seated, and two police inspectors, with cutlasses, stood upon the step behind. The *cortege* moved at a rapid pace, and the whole party wore an air of readiness for immediate action, but beyond the ordinary amount of excitement or curiosity, which the passage of military through the streets never fails to excite, there was little manifestation of sentiment by the public. In the vicinity of the court-house careful precautions were taken against surprise or the assembling of large crowds. Police constables patrolling in pairs, every second man with a revolver in his belt, kept persons as far as possible from loitering, and admission to the body of the court, though granted freely as far as space permitted, was nevertheless regulated with considerable care. The court-house, which was completed about three years ago, is a handsome building; Gothic in character, and internally perhaps the most elegant and commodious in arrangement of any similar structure in the kingdom. To some extent it may doubtless be regarded as the shadow of coming events in the metropolis, each of the designs exhibited in Lincoln's-inn having points of resemblance, at least, to the creation of Mr. Waterhouse. As regards the furniture or fittings of the court, there is an entire absence of red curtains, and generally of the stuffy air of the courts at Westminster. This, no doubt, is largely due to the fact that upon two sides of the court a portion of the wall may be said to consist almost of glass, light being admitted through no less than four-teen windows, each twelve feet or thirteen feet in height. The sides of the court which have

not been pierced for windows yet continue the series, as it were, having recesses with similar outlines, suggestive of niches in which frescoes might hereafter be deposited. The only deviation from the striking and yet graceful simplicity of the interior is the legend placed beneath the principal gallery, and immediately fronting the witness box, "Thou shalt not bear false witness against thy neighbor."

A slight delay occurred in the constitution of the grand jury, a train by which some of its members travelled having been, as was stated, detained for three quarters of an hour. No difficulty, however, was experienced in obtaining a sufficient number of grand jurors, and, as a mark of the entire confidence with which the state can and does appeal to all classes in repudiation of the principles in which Fenianism makes itself the exponent, it was noticed as significant that the foreman of the grand jury, and consequently the first to be sworn, was a Roman Catholic gentleman of property and influence. The names of those sworn upon the grand jury were as follows:

Sir Robert T. Gerard, foreman; the Hon. A. Egerton, M. P.; Mr. Henry Tootal Broadhurst, Mr. H. G. Bromilow, Sir William H. Fielden, Mr. J. Cheetham, M. P.; Mr. Gilbert Greenall, M. P.; Mr. R. N. Philips, M. P.; Mr. J. T. Hibbert, M. P.; Mr. B. Whitworth, M. P.; Mr. J. Platt, M. P.; Mr. R. N. Norreys, Mr. Jonathan Peel, Mr. R. Pennington, Mr. R. M. Redhead, Mr. Clement M. Roys, Mr. C. H. Rickards, Mr. S. H. Thompson, Mr. R. M. Wilson, Mr. T. E. Withington, Mr. W. R. Wood, Mr. Nathan Worthington, and Mr. W. M. Sanderson.

Mr. Justice Blackburn, in his charge to the grand jury, explained that the special commission differed from ordinary commissions only in being confined to such crimes as arose out of or related solely to the outrage recently perpetrated in this county. In every other respect the jurisdiction of the grand jury was the same as at an ordinary assize. The evidence to be brought before them up to a certain point was perfectly plain, and the facts were undoubted. On the 18th of September last two prisoners were brought before the city magistrates, and in due course remanded and sent back in the usual way, with others, to prison, in custody. When on their way the prison van was attacked. There had been some reason to suppose that there might be some outrage or attempt at rescue. The number of policemen in charge of the van was therefore increased, but no one expected such an attack as actually took place, and consequently there were not those precautions taken which otherwise would have been adopted. The place selected for the attack had been chosen with considerable skill. The grand jury would find from the evidence that the van was suddenly attacked by a number of men. As regarded the precise number concerned in the attack, the police and spectators who happened to be present had, of course, no opportunity of counting them, and therefore might differ upon that point. But there was no doubt at all that while a portion of these persons followed the van, surrounded it, and kept the spectators at bay, another portion proceeded to break open the van, or endeavored to do so, for the purpose of rescuing the two prisoners, and ultimately succeeded in this attempt. While this was going on a considerable number of pistol-shots were fired by those concerned in the attack, and the police were struck repeatedly with stones. Two of the police were wounded by the pistol-shots, and one, named Charles Brett, was killed. The principal crime the jury would have to inquire into was the death of that policeman. They would see, from the circumstances of the attack, that a variety of crimes were committed in this successful attempt to rescue prisoners who were in lawful custody. He need not tell them that these different crimes, though there might be good reason for supposing that a man who was guilty of one would be guilty of the other, yet that each would be a separate crime, and, therefore, upon the bills to be laid before them the jury would give a separate finding where a separate offence was charged. As, however, the crime of murder was the highest offence, and as those guilty of the other offences in this case were probably guilty of murder also, he believed there would not be brought before them any charges except those connected with the murder of Brett. His remarks would therefore have for their object to render them assistance in reference to the charge of murder which they had to investigate. The evidence left little doubt that Brett had been stationed inside the van among the prisoners, and that, to unlock the van on the outside, the keys must have been handed out through the ventilator, for while they were retained inside by Brett the van could not be opened from the outside except by breaking open the van. The attack occupied some time, and probably it was considered that had the assailants been obliged to break open the van there would have been time enough consumed to permit assistance to be brought to the police, and thus the crime would have been prevented. From the evidence the jury could not have much doubt that the manner in which Brett met his death was this: The ventilator was forced open while Brett endeavored to do his duty by keeping it closed; the keys were demanded from him; in pursuance of his duty, he refused to give them up, and, in consequence of this refusal, he met his death by a shot in the head. There was but one shot that was fatal, and one man only could have fired that shot, and he, therefore, was the person who committed the crime of murder; yet every one who aided and assisted in the attack was equally guilty of murder with the person who fired the shot. The evidence went strongly to show that Allen was the person who fired the shot, and on that point the jury, if they believed the evidence, could have little difficulty. As to each of the other prisoners, the question would be whether or not they were aiding or assisting in the crime. He must explain that it was not necessary, in order to constitute the

crime of murder, that the main object should be to kill a particular individual. Murder was killing by "malice aforethought," as it was called, but it was not essential that there should be the intention to kill a particular man. The law had always been so laid down, and common sense would show that it must be so. When men associated for the perpetration of an unlawful act, involving violence, which it must be known would be dangerous to human life if death ensued from that violence, that constituted the crime of murder, although there might not be a wish to kill the particular man who was slain. Whenever persons agreed among each other, either expressly or tacitly, to take part in the performance of an unlawful act, every person concerned in such dangerous and unlawful act was equally guilty of murder, if that crime were committed, as the person who fired the fatal shot. Taking that as the rule of law, and applying it in the present case, they could have no difficulty about the points to which their attention should be directed. When a body of persons assembled and attacked the police guarding the van, with the intention of rescuing the prisoners, and the prisoners were actually rescued, there could be no reasonable doubt that every man concerned, whether in shielding those who made the attack, or actually breaking open the van, or in the act of stopping it, was a party to the unlawful design of rescuing those prisoners. Then the very fact that there was a scheme or intention to attack the police was in itself strong evidence that there was the intention to use dangerous violence. It was scarcely possible that any man could have joined in that attack in doubt as to whether resistance would be made on the part of the police. It was scarcely possible, on that alone, to come to any other conclusion than that the men who were parties to attacking the police were parties also to the design that dangerous violence should be used towards the police. Further than that, when the parties were armed with fire-arms, the evidence was additionally strong against them. Pistols or other fire-arms were, from their very nature, offensive weapons. A man could not use a pistol merely to ward off attack from himself. Its use could therefore have been only for the purpose of discharging it with danger to the life of others. Therefore, all who had fire-arms, or knew that others had, must have intended to use dangerous violence towards the police. Further than that, there was evidence that after the discharge of the fire-arms the prisoners still continued the attack upon the police. Not as a matter of law, but as a matter of practical common sense, he must say it could not be doubted that those who continued the attack on the police after fire-arms had been used, continuing to aid and assist those who they knew intended dangerous violence, which did in fact cause the death of the unfortunate man Brett, were concerned in the common design of using dangerous violence against the police, and guilty of murder, though they might have had no ill will against Brett individually. It was possible they did not know that Brett was in the van; they might not even know of his existence; yet still they were all responsible for the act that one of their company committed in carrying out the common design of using dangerous violence towards any of the police who might resist their efforts in procuring the rescue of the prisoners. All who were engaged in that common design were guilty of murder equally with the man who fired the shot. The only difficulty in considering the case was in regard to the number of the prisoners concerned in the attack. He need not tell them that the case against each individual prisoner was to be looked at as the evidence bore upon him in particular; that they would have to determine whether he was doing such acts and conducting himself in such a way as to lead to the conclusion that he was one who had this common design which resulted in the death of Brett; and they must consider that point in regard to each individual prisoner. Several of the prisoners were taken on the spot. A considerable number were not taken on the spot, but at different periods afterwards. In those cases there was the possibility, of course, that the witnesses might be mistaken as to their identity. Upon that a considerable portion of the defence would be founded, but as a grand jury they had only to consider whether the men should be put upon their trial. If, on looking at the evidence before them as to any one of those individuals, they came to the conclusion that the evidence against him was too slight, or if not satisfied that there was a reasonable ground for putting him on his trial, then, so far as regarded that individual, they would not find a bill. It was of great importance to the prisoners, and also a point of great importance to the public interests, that each case should be calmly, quietly, and dispassionately considered, without either weakness in favor of the prisoner or any feeling of passion against him. It should be considered as a question of practical business. He had nothing more to add, except to explain that the offence which had been committed was a joint offence in all the prisoners, and also a separate offence in each individual. There would be nothing illegal or improper in joining all the prisoners in one indictment, or any two or more in one bill; if satisfied that the individuals named were persons against whom a bill should be found, it might be done in either of those ways. Those who conducted the prosecution were the persons who had to consider what they thought would be the most convenient course. They would have the bills brought before them as the advisers of the Crown considered most convenient. If they had one bill containing all the names of the prisoners, it would be their business to consider whether in regard to each individual there was a *prima facie* case or not. If they brought a number of bills it would still be the same question; they would see as to each individual whether he was properly charged or not, and find or reject the bill as against him accordingly. They would have to consider the matter in a calm, deliberate, and dispassionate manner, without interest either one way or the other,

and find their bill accordingly on the evidence brought before them, as to whether it was right and proper that the particular individual should be tried for the crime charged against him. The bills would probably be brought before them in the same order in which it was desired that the prisoners should be tried; they should therefore dispose of one bill before beginning with a second.

In the case of petty jurors several medical certificates were tendered, and fines in some cases were imposed by the court. It was necessary to observe a certain amount of strictness here, because the prisoners, being each at liberty to challenge upwards of twenty jurors peremptorily, and as many more as they could show just cause for, could, by simply refusing to join in their challenges, exhaust a panel even of unusual length.

Upon the assumption that the whole of the twenty-six prisoners might be placed in the dock at once, and hence that considerable difficulty and confusion must be created in the minds of the jury as to which of the prisoners any particular witness was pointing out or identifying, stands, or tall wands, with numbers affixed to them, had been prepared and placed in the dock, very much after the fashion in which prize seedlings are labelled at a horticultural show. It was felt, however, that objection might perhaps be taken to such an arrangement, as calculated to operate prejudicially towards the accused, and before any one was placed in the dock these index poles were all removed.

Dr. Digby Seymour, Q. C., said he had an application to make, namely, that the court should adjourn the hearing of any indictment that might be found by the grand jury until the next day. He made the application in the peculiar and exceptional position in which he and his learned friends were placed. Every effort has been made by the gentlemen who instructed them to enable them to be in a position to meet the case submitted to the court, but their preparations were not sufficiently completed to enable them to feel they were sufficiently instructed to undertake the onerous and responsible duty. He and his learned friends who appeared for the prisoners had had no opportunity to meet together and consider as to various important questions that might arise as to the course which it might be incumbent on them to take. He was satisfied that the ends of public justice would be served and time economized by their lordships granting the application.

Mr. Justice Blackburn thought it would be impossible to form any opinion or decision upon the proposal until bills were found and pleas had been taken.

The grand jury retired for upwards of an hour, and on their return into court it appeared they found a true bill against W. O'Mara Allen, Michael Larkin, William Gould, Thomas Maguire, and Edward Shore for murder.

The prisoners were then brought into the dock and severally pleaded not guilty. They were not handcuffed.

Mr. Digby Seymour, Q. C., stated that he appeared, with Mr. Earnest Jones, for Allen, Gould, and Shore.

Mr. Sergeant O'Brien said he, with Mr. Cottingham, appeared for Michael Larkin and Thomas Maguire.

Mr. Seymour, in renewing his application for an adjournment, wished to state that the Crown had supplied the conductors of the defence with the substance of the evidence of twenty-five new witnesses, and the evidence applied, in different degrees, to all the prisoners now at the bar against whom a true bill had been found. He hoped that their counsel might have an opportunity of mutual consultation and consideration between this and next day. They had had no opportunity of seeing the fresh evidence, and his information even with regard to the other was very slight. It would be also convenient if they had an opportunity of looking at the panel of the jury. He spoke the sentiments of his learned friends as well as his own when he said they were anxious to do nothing to hinder the administration of public justice. Therefore they wished, before deciding whether they should challenge the jury jointly or severally, to have an opportunity of looking at the panel to consider whether there were any objections that they might fairly take or not. It was a matter of some importance that they should not be pressed for an immediate decision.

Mr. Sergeant O'Brien said he had nothing to add to what had been said by his learned friend, except that he entirely concurred.

The attorney general said, of course, the sole object the Crown could have was that a fair and impartial trial should take place in a case of this description, and therefore he would not for one moment oppose the application if their lordships thought it should be granted. If they had not had time to study the depositions, it would be unsatisfactory, after a declaration of that sort had been made by the learned counsel, that the case should be pressed for hearing.

Mr. Justice Blackburn thought it was reasonable the prisoners' counsel should know who the jurors were. He did not know whether it was altogether practicable to give the information, as the panel was rather limited in number, and a direction had been given to summon an additional number of jurors, and their names could not be told until they were summoned.

The attorney general said he should be glad to find that no technical objections were raised, or any delay took place, when they met next morning for the purpose of continuing these trials.

Mr. Justice Blackburn said he thought it would be a convenient course that in this in-

dictment the judges should sit together, but that in the subsequent indictments they should sit in the two courts, so that they would have the different points of law decided while sitting together, and after that the cases would be comparatively simple and they would sit separately.

Mr. Seymour said, in asking for permission to have a copy of the panel, he should like to add, access to the jury-book.

Mr. Justice Blackburn did not see what the learned counsel wanted with the jury-book. He did not know what object it would serve.

Mr. Seymour said that the jurors' book was kept in the custody of the sheriff. It showed the persons competent to be returned as jurors according to the various lists sent in. The panel was selected by the sheriff from the book. Of course it was to be presumed the panel had been selected carefully and impartially, but he thought the counsel should have the opportunity of considering whether the selection was open to any objection.

Mr. Justice Blackburn said he was under the impression that the list of jurors and the persons qualified as jurors was a public list, made out by the overseers and printed, and to be found in the town by every person who wished to obtain the information. However, the jury-book was in the possession of the under-sheriff, and could be inspected without any difficulty; but in consequence of having to summon other jurors it would be in use during the day. It would be inconvenient to see it during the time this selection was going on. They could have a copy of the present panel, and the remainder as soon as the others were summoned. As the attorney general did not offer any objection to the application for postponing the trial till next morning, the court would not object. The jury-book, he understood, was at Preston, and would be at this court in the morning.

The court was accordingly adjourned. The grand jury would, in the mean time, proceed with their examination into the cases against the other prisoners.

The prisoners were removed from the court-house to the jail with similar precautions to those which had marked their entry into town in the morning. Owing to the early hour at which the court rose, the streets were much crowded, and accordingly at all the points where there seemed a probability of interruption, from cross-traffic or otherwise, bodies of constables were posted to keep the route clear. The Highlanders were formed into hollow square, with the van in the centre, and marched almost at the double in this formation to the jail—a distance of about three miles. Severe though this pace must undoubtedly have been, they kept well up with the cavalry the whole way.

[From the London Times, October 30, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Tuesday.*

The proceedings before the special commission re-commenced this morning at 9 o'clock.

As before, the prosecution was conducted by the Attorney General, Mr. Pickering, Q. C., Mr. Sowler, Q. C., Mr. Hannen, and Mr. W. H. Higgin; Mr. Digby Seymour, Q. C., with Mr. Ernest Jones, appeared for three of the prisoners, Allen, Gould, and Shore; Mr. Sergeant O'Brien, with Mr. Cottingham, appeared for Michael Larkin and Thomas Maguire.

At the sitting of the court—

Mr. Digby Seymour said he had an application to make which undoubtedly could have been made more conveniently to their lordships or to a single judge sitting in London, but to which he did not see any legal objection. That application was based upon an affidavit praying, that for reasons therein stated, the court would order a certiorari to issue for the removal of the trial of the indictment to the central criminal court.

Mr. Justice BLACKBURN. Perfectly impossible, Mr. Seymour. I hope I am not prejudging anything you may have to say; but it is perfectly impossible that we, sitting here under a special commission issued under the advice of the responsible advisers of the Crown, can do anything to contradict or defeat the special object for which we are sent.

Mr. SEYMOUR. The words of the statute 19th Victoria, cap. 16, are clear and absolute, and, I would submit, override the terms of the special commission.

Mr. Justice BLACKBURN. I am not speaking of the terms of the commission, but of the discretion vested in the judges.

Mr. Seymour said that if their lordships felt themselves placed in any difficulty by the special commission, no objection could be entertained to an application to a judge in London, if a reasonable time were granted for that purpose.

Mr. Justice BLACKBURN. I feel no doubt that any judge sitting in London would take precisely the same opinion which I have expressed, and I certainly cannot postpone the trial to allow any such application to be made. At the same time, if you think you can change my opinion, I will hear you, Mr. Seymour. Nothing which you can urge upon any general ground against proceeding with the trial here or at this time could properly be entertained

now; but if there be any particular or special ground which would make it improper to proceed, we will, of course, hear you.

Mr. Seymour said he would read the affidavit from Mr. Roberts, the attorney for the prisoners, which was as follows:

"The Queen v. William O'Meara Allen and others.

"I, William Pronting Roberts, of Manchester, in the county of Lancaster, the attorney for the above prisoners, charged upon an indictment for the murder of Charles Brett, on the 18th of September last, make oath and say: 1. That I solemnly and sincerely believe that a fair and impartial trial cannot be had at this commission. 2. That this deponent has this belief pressed upon him by the following, among other considerations—that since the lamentable occurrence, out of which the present charge has arisen, great and increasing excitement and alarm have prevailed in the minds of the inhabitants of Manchester and its vicinity. 3. That the most exaggerated fears and rumors of impending outbreaks have been, and still continue to be, circulated in the district from which the jurors are summoned. 4. That the extraordinary precautions adopted by the Manchester authorities and guardians of the peace for the protection of the courts of justice and of the town are calculated to intensify the present feeling of uneasiness and alarm. 5. That the comments of the local press have tended to aggravate the above-mentioned feelings and to create a strong prejudice against the accused. 6. That the prevailing feeling of the public mind has manifested itself, among other ways, in strong demonstrations of hostility to the accused during the hearing before the committing magistrates. 7. That sufficient time has not elapsed since the committal of the offence charged to allow these feelings to subside. 8. For these and other reasons conducing to the same conclusion this deponent declares and believes that the accused cannot have a fair and impartial trial in Manchester or elsewhere in Lancashire. 9. That it is the unanimous opinion of the counsel for the prisoners that the removal of the present indictment, under the powers of the 19th of Victoria, cap. 16, to the central criminal court, would, while protecting the interests of the accused, best conduce to the ends of public justice.

"W. P. ROBERTS."

Mr. Justice BLACKBURN. Supposing every word of that were true, there is no ground whatever shown for removing the trial from before the present special commission.

Mr. D. Seymour then said he thought it right to state that, having examined the panel and the jury-book, in accordance with the permission granted by the court, he felt it right to state that there could be no possible objection to the manner in which the panel had been framed.

Some conversation ensued as to the order in which the names of the jurors should be called. After consultation—

Mr. Justice Blackburn said: Let the names be drawn by ballot. There is no rule of law requiring that to be done; but it seems a fair and reasonable way.

The attorney general asked whether the prisoners joined or severed in their challenges.

Mr. Justice Blackburn remarked that if the prisoners decided to sever in their challenges, they could not be tried together.

After consultation, counsel for the prisoners agreed to join in their challenges, and several jurors were accordingly challenged *peremptorily*. It was left to Mr. Roberts, the solicitor for the prisoners, to utter the word "challenge" audibly upon their part whenever this was felt to be expedient, but being apparently deaf, and very confident in his own opinion, he after some time ignored the arrangement of joint challenging, and, against the opinion of his own counsel, sought to claim an unlimited number of challenges.

Mr. Justice Blackburn said that, as a matter of convenience, the court had allowed the attorney for the prisoners to challenge; but, as this appeared to have given rise to some irregularity, in future they could only recognize the direct utterances of counsel.

As soon as the name next balloted was called out, Mr. Roberts, in a loud voice, cried "challenge."

Mr. Justice Blackburn said Mr. Roberts had already been told that he must not interfere. If he did so again, he would be taken into custody. (Applause in court.)

Mr. ROBERTS. That remark is perfectly uncalled for.

Counsel for the prisoner endeavored to quiet Mr. Roberts, but when the next name was drawn that gentleman called out as before—I object on the part of Allen.

Mr. Justice BLACKBURN. Take that man into custody and remove him. I will not suffer the business of the court to be interrupted.

Here again there was a loud outburst of applause in court, and a police officer moved forward, and took his place beside Mr. Roberts.

Mr. Seymour hoped the court would reconsider its determination. It was a very strong measure to remove from court the attorney of prisoners on their trial for murder.

Mr. Justice BLACKBURN. Well, let him remain. But I must have him removed from court if there be any further disturbance.

The jury to try the prisoners was then sworn, without further altercation, and—

William O'Meara Allen, Michael Larkin, William Gould, Thomas Maguire, and Edward Shore were then formally arraigned upon an indictment charging them with having on the 18th of September feloniously, wilfully, and of malice aforethought killed and murdered

Charles Brett; and Allen stood charged separately with the murder upon the inquisition taken before the coroner. To this arraignment they all pleaded "not guilty."

The prisoners, with the exception possibly of Maguire, who has a military bearing, are none of them men from whose aspect or physique a readiness to plan and share in a deliberate and desperate attack like that upon the prison van would be inferred. Allen and Larkin are, if anything, undersized, but have both an unprepossessing expression of countenance. Gould, on the other hand, if seen under other circumstances would be considered to present a respectable exterior. Most of the prisoners were furnished with printed copies of the evidence taken on the former occasion, from which they repeatedly made suggestions to their counsel in the course of the hearing.

The attorney general, in opening the case on behalf of the Crown, said he was sure it was wholly unnecessary for him to ask the jury to forget everything they might have heard outside the walls of the court, and to give their verdict according to the evidence and to the law, not biased in the slightest degree by anything they had heard without, or by any feelings of partiality whatever. The charge against the prisoners was undoubtedly of a most serious nature. The circumstances out of which it arose were happily most unusual, but the facts were simple, clear, and such as might be thoroughly understood. That the outrage committed on the 18th of September was committed by a large number of persons, by preconcert and combination, they could have no doubt whatever when they heard the circumstances of the case; and they would find, beyond all doubt, that there must have been considerable arrangement and considerable ingenuity displayed in the way in which the attack was conducted, and that the motive which actuated those who were engaged in the attack was to release two men known by the names of Kelly and Deasy. The attorney general detailed very clearly and in some detail the circumstances of the attack, and said he would have to call many witnesses to describe minutely what took place in the twenty minutes that elapsed between the horses being shot and the time when the prisoners escaped. He believed the jury would find beyond all doubt that, although it was Allen who fired the shot at Brett by which he was killed, all the other prisoners took an active part in the desperate affair which resulted in the death of Brett and the release of the men inside. That some of the prisoners were intimate with, or at all events known to, Kelly and Deasy would be proved, and the sole question which the jury would have to determine was whether each and all of the prisoners, or any of them and each of them, was present upon the occasion, taking part in the desperate affray; for if these men concerted together to effect an attack upon the prison van, and upon the officers in charge of it, in order to release prisoners by such means as might be necessary for the purpose, then not only the person who fired the fatal shot, but all those who were aiding and assisting in enabling Allen to carry out the common object, were equally guilty of the crime of wilful murder. He was perfectly aware that this occurrence, so unusual and so desperate, carried out under such extraordinary and unusual circumstances, bad far and wide, not only in Manchester and the neighborhood, but throughout the kingdom, been made the subject of discussion. But he was sure the jury would feel the responsibility cast upon them, and he was certain that if they had heard it discussed, or had even discussed it themselves upon any previous occasion, they would forget what had passed, and, listening to the evidence as judges between the Crown and the prisoners, would bring to bear upon the solemn and important investigation in which they were now engaged all the care, attention, firmness, and impartiality which it so indispensably required.

The first witness, Joseph Yarwood, one of the Manchester police officers, was then examined by Mr. Pickering, Q. C., and deposed that on the 18th of September he was on duty at the Manchester police court. At the close of the day's business, about three o'clock, several prisoners had to be taken to the city jail at Belview, a distance of about three miles from the police office. Among the prisoners were two known as Colonel Kelly and Captain Deasy, whom witness handcuffed separately before they were removed. A van was employed for that purpose. It contained eight cells on each side, closed in by doors, divided by a corridor running down the middle. Sergeant Brett got into the van just after it started. There was no seat for him; he would have to stand in the corridor. Besides the prisoners in one or the other of the sixteen cells or boxes, there were some female prisoners standing in the corridor with Brett. There were four police in front of the van, two on each side of the driver, two on the steps behind, and Brett inside. Witness was one of the four in front, and occupied the right-hand place on the outside: two of the four were court officers, and two detective officers. In addition to those upon the van there were about four police officers in a cab behind. Usually only one policeman went with the van. It started that day about or before half-past three. To reach the jail it was necessary for the van to pass along Hyde road, which is crossed by a railway arch; near that arch is a public house called the Halfway house to Belview. There were two or three other public houses in the neighborhood. Underneath the railway arch or skew-bridge there were footways for passengers going under separate arches from that crossing the roadway. This arch was about two miles from the police court, and on the way there a toll-bar is passed. Beyond the arch an open space is reached of considerable size; this is a brick field, and part of it is raised about two feet above the road. From this brickcroft or field the Sheffield railway can be reached. The brick field lies on the left of the road; on the right is the railway embankment; the same railway which crosses the road. Nothing occurred to the van till the skew-bridge was reached.

About a horse's length from the Hyderoad Inn, the last public house on the left hand side before reaching the bridge, and about sixty yards distant from it, witness observed a crowd on the other side of the arch near the brick field. The horses' heads got through the bridge, and about half of the van, when Larkin and another man, not here, came forward. The other man caught hold of the near horse's head by the bit, and Larkin caught hold of the bridle. The other man took no trouble to stop the horses; they were already stopped then—they were just prancing with their feet. Larkin shot at one of the horses—the near horse; could not say whether he shot it or not, but the horse reared up and fell down. Witness seized the reins from the driver, and said, "Drive on." The driver said he could not, as his horse was shot. Did not know the driver's name, except that it was "Charles." As soon as he had fired at the horse, Larkin fired at the police on the top of the van. He raised his pistol in the air, but not apparently taking a deliberate aim. Witness thereupon jumped off the van. Before he did so, saw that Gould fired at the off-horse, straight at his head. Did not see at the time whether it was hit or not. After firing, Gould walked round to the back of the van. At the time he fired he was in front of the horse. As soon as witness got down, Larkin came up to him with a pistol and said, "What do you mane?" Witness came out with an expression, "D—n you, I will tell you what I mane." Whether Larkin was frightened of him or not, he could not say, but he trembled very much. Witness tried to catch hold of the barrel, but missed it and knocked it up, and it went off in the air. Saw that it was a revolver. When jumping off the van, on account of the height, his hands and feet came to the ground together; in doing so he picked up a small stone, which was in his hand when the pistol went off as described. Sent the stone at Larkin, which hit him right in the hip, but it had no force with it. Larkin came out in his own language with a "Whoo!" and fired after him; witness went ducking and dodging—putting his hands up and ducking down—and Larkin followed him a couple of yards. Ran towards the toll-bar, and was again fired at. Larkin fired in all three shots after he had hit him with the stone. About a yard the other side of the toll-bar there was a cab, into which witness got and directed it to be driven to Belview as hard as it possibly could.

The grand jury here came into court, and returned true bills in all against twenty-one of the prisoners named in the calendar for wilful murder. The bills were found in distinct batches. The first was against William Martin, John Francis Nugent, Patrick Coffey, John Bacon, John Brennan, and Timothy Featherstone. The second was against Thomas Scalley, Michael J. Boylan, Henry Wilson, Michael McGuire, and William Murphy. The third against Patrick Kelly, Michael Kennedy, William Brophy, Daniel Reddin, and Thomas Ryan. The fourth was against John Carroll, Charles Moorehouse, James O'Brennan Chambers, Thomas Johnson, and John Martin.

Examination continued:

At the jail witness procured the assistance of about eight turnkeys. They all came down as fast as they possibly could to where the van was attacked. The attack was over when they returned. Witness, with some of the other warders, in consequence of information received, ran across the brick-field in the direction of the Sheffield railway. Near this was a wall, and before witness reached it Larkin was in custody of some civilians, who turned him over to some constables. Being exhausted, witness came away from the place. At the scene of the attack saw Allen. He was on the embankment among the crowd, but that was before any shot was fired. Saw Thomas Maguire also; he was not far from Allen. Only had a side glance at them.

Cross-examined by Mr. DIGBY SEYMOUR:

Was at the police court on the 11th. Only heard one officer giving evidence against Kelly and Deasy. He was an officer from Ireland. That was on the 18th, the day of the attack. The officer said something about their being Fenian leaders, which caused them to be remanded for a week, he believed. Brett took charge of Kelly and Deasy. Did not notice whether any warrant was made out. Brett kept them in charge till they were put into the van. Never saw either Gould or Allen before the 18th of September. Did not notice any revolver or anything in Allen's hand. Larkin fired at the near horse before witness saw Gould. The second man who came up with Larkin is not in custody. Had mentioned that fact before—not in the depositions or before the magistrates. It occurred to him because he had mentioned it to the other constables. Did not say before the magistrates that Larkin and Gould rushed from behind the arch. (Reference was made to the witness's former deposition, in which he stated that the horses' heads had just got through the arch when the prisoners Gould and Larkin rushed from behind the arch.) Should not call it "rushed;" they came from behind the arch.

Mr. Justice Blackburn said the deposition was not inconsistent with the present evidence, as the witness did not state in it that Gould made any attempt to stop the horses. If Mr. Seymour wished to use the deposition it should all be read aloud.

Cross-examined by Sergeant O'BRIEN:

Had not known Maguire before. Said before the magistrates that Larkin shot the brown horse in the neck. His deposition was read over to him and signed it. Did not notice any omission.

Sergeant O'Brien read the deposition, which stated that "at the same time that Larkin seized hold of one of the horses and gave it a jerk Gould fired a revolver at the black horse."

The witness said he had explained the matter before the magistrates as he did now. Picked up the stone which he threw at Larkin before he threw up the pistol. Witness ran away. Did not see anybody else with pistols but Gould and Larkin. Was four or five yards from Larkin when the latter fired after him. Did not know the civilians who had Larkin in custody on his return; they had given him over to two of the C constables before he got up. The civilians were hitting Larkin, and witness said "Don't hurt him."

The witness was re-examined by the ATTORNEY GENERAL, and by the aid of a model of the railway arch and adjoining embankments explained to the jury the nature of the locality where the attack took place.

GEORGE SHAW, one of the police constables who sat between the driver of the van and the last witness on the day of the attack, was examined by Mr. SOWLER and deposed that he could see through the arch, and noticed a number of men running across the brick-field in the direction of the railway arch. When the van got near the arch, he noticed that a number of men were dropping down towards the footpath from the brick-field in double file. Was not near enough to hear anything said. When just getting through the arch he saw one or two men standing level with the arch with pistols in their hands. When the van got a couple of yards through several shots were fired. About the same time some one cried out "Stop the van," and also "Shoot the horses." Did not see anybody there that he could select from the rest. Somebody ran and shot the horse on the near side; believed he missed it the first shot, and then went closer to it and fired again. Another man ran and put a pistol to the other horse and shot it. Saw four of the prisoners there—Allen, Larkin, and Gould. Believed that Maguire was also there. Saw Allen shoot several times. Could not speak to any of the men to be positive before he got off the van. Got off as soon as he could. A pistol was pointed up apparently at the police on the van. Yarwood jumped off and cried "Duck, Shaw, or you'll be shot." On descending witness got to the abutment on the left hand side of the bridge. Ran through a storm of shot and stones. In all there were probably 100 shots fired. On getting to the abutment saw Allen with a pistol in his hand protecting others who were trying to get into the van. Saw the other three prisoners whom he had named breaking in the van and throwing stones at the police. Allen was standing on the steps of the van and fired towards it—believed towards the keyhole. Could only see the barrel of the pistol. Did not know what kind it was. Heard a woman's voice inside cry "He's killed." Witness and others were then driven away again by stones and shot through the arch; returned as soon as a few others could be collected together for the purpose. When first witness saw Brett he was lying in the road with his feet on the steps and his face towards the ground. There were a great many people about the van; could not say exactly whether he saw the prisoners come out of the van. Saw Shaw throwing stones. The police were driven back several times with stones and shot, the contest was so fierce. Henry Sprossan, a civilian who was assisting the police, was driven away and shot in the foot by Allen. Allen ran down the road after the police and bystanders, 30 yards from the van. Saw Allen level the pistol; Sprossan and witness were standing close together at the time; was looking directly at Allen when he fired the shot. Sprossan was sent to the infirmary. Saw Larkin assisting to drive the crowd away several times by throwing stones. Gould also threw stones at the crowd and at the police. Shaw was acting similarly near the van. Was not certain about Maguire.

Cross-examined by Mr. D. SEYMOUR:

Could not say that he knew any of the men before, whom he had identified. Could not say that he saw revolvers in the hands of either Gould or Shore. There must have been more than twenty or thirty shots; perhaps there were one hundred. Kept his body back as well as he could behind the abutment. Took a general observation as well as he could by putting his head out; did not put his head out very far. [Laughter.] Saw some people hammering at the lock of the door; there was a couple of locks on it. Saw Allen fire towards the lock of the door, the same lock at which there had been the hammering. Believed he only fired once; if it was twice it was very quick in succession. Immediately afterwards heard a voice inside. "He is killing;" that was immediately after Allen fired, as he thought, at the lock. His impression at the time was that it was to burst the lock he fired. At that time witness was the nearest police officer to the van.

Cross-examined by Sergeant O'BRIEN:

There were a great many throwing stones, there might be forty or sixty. Did not think there were more than a dozen men assisting the police.

Re-examined by the ATTORNEY GENERAL:

Believed that Larkin and Shore were among those knocking at the van. Some were knocking with stones, but there might have been something else, for their backs were towards him.

THOMAS PATTERSON was examined by the ATTORNEY GENERAL, and deposed that for the last six months he had been working at the brick-croft near the skew arch on the way to Bellevue. On the 1st of September he was at work there, when his attention was attracted by a noise which caused him to run across the field and look over a wall. He then saw the

prison van at a distance of about six hundred yards, and from thirty to forty men near it throwing stones and firing pistols. The van was through the arch about thirty yards, and was stopped. Came down towards the van, and the stone throwing and firing was going on the whole time at people under the arch. Witness got down to the paper-mill wall, which was about ten yards from the van and thirty from the railway arch. Saw a man get on to the top of the van, to whom another threw up big stones with which he first commenced to break in the top. The man who endeavored to break in the van was Allen, and Maguire was the man who threw stones up to him. Allen remained till he made a small hole in the top of the van. Did not notice what the other men round the van did till Allen came down. On getting down he went towards the skew arch, while two other men got up and continued to break in the top of the van. Did not take particular notice of them till he heard one man, with white cord breeches, at the back of the van, say, "Shoot the —, he's inside." Thereupon saw Allen run with two revolvers from the side of the arch where he had been threatening to shoot anybody who should approach the van. He had been running about first to one place and then to another. He placed both revolvers in the ventilator. Witness thereupon heard a report and a scream and a woman's voice from the inside. Next saw the door of the van opened; from where he was could not see how it was opened. As soon as it was opened Brett fell out. Some women also came out and two men. At the time they came out he could see Allen at the back of the van. Both these men had handcuffs on them. Just as they got on to the footpath heard Allen say, "Arrah, Kelly, I'll die for you before I'll deliver yez up." That was said on the footway at the left hand side of the road. A lot of men got before them and behind them. They were the men who came from about to assist them. They went in the direction of the Sheffield line across the waste ground. The men who came out of the van went off in their handcuffs. Did not see any of the prisoners with those men. Allen stopped behind and threatened to shoot anybody who should follow. When the two men with handcuffs had gone about six hundred yards Allen followed them; till then he remained on the bank. Both Larkin and Gould remained with him on the bank. Had previously seen Gould and Larkin at the back of the van; that was just before it was broken open by the men on the top. Witness with others followed the prisoners when they left and kept them in sight. Allen threatened to shoot if they did not desist from following them, but in spite of the threat they followed. He fired off a shot from the Sheffield line which he had to cross at a man who was following him. Gould and Larkin were with him then. At the other side of the Sheffield line there is a wall, and Larkin was caught there and handed over to a jail officer. Went on after the capture of Larkin, and came up with Allen and Gould. Gould stopped and Allen went on. Gould was taken into custody at Perkinscroft, and Allen a few hundred yards further on. When taken Allen had one pistol with him, a revolver. Between the shot fired by him from the railway embankment and his capture he had fired off one other shot. A young man named Robert Hunter took the revolver from him. Before the pistol was taken from him he said he would surrender; there were also taken from him a lot of cartridges, an old pipe, and a book. About a quarter of an hour elapsed from the time the men came out of the van till Allen was captured. There were a great many shots fired that day; could not say how many. Stones were freely thrown, in all by about thirty or forty persons.

Cross-examined by Mr. D. SEYMOUR:

Did not see Gould do anything, or having either a stone or pistol in his hand. Did not know him before; he was quickly off. Was not above three seconds with the officer to whom Gould was given up till he went on and followed Allen. The place where Gould was taken was about half a mile from the van. When Allen said, "I will die for you, Kelly," he was nearer to witness than he had been. When witness sat on the wall he was rather behind the van, which was slanting-like to where he was. Did not see a hammer in Allen's hand. He might have had, but would not swear it. Heard the hammering. Could not say how it was done.

The grand jury here came into court with true bills found against the whole of the twenty-six prisoners named in the calendar upon other counts of misdemeanor and felony.

As these were the only remaining bills to be sent before them, Mr. Justice Blackburn discharged the grand jury with the thanks of the country for the services they had performed.

Cross-examination continued:

Could see the end of the van where the door was.

Cross-examined by Mr. Sergeant O'BRIEN:

The van was thirty yards through the arch; it was not near the turnpike. There is no turnpike; there is a toll-bar. [Laughter.] There was another man on the wall with me; he stood up and I sat down. His name is Jack Berger. I could not tell what he saw, or whether he saw more than me. He was further up the wall. A good many men came for stones near where I was, but I could swear to two men particularly, because they came oftener. I sat on the wall till it was over. I could not say how many minutes it might be.

Re-examined by the ATTORNEY GENERAL:

When witness got on the wall there was no driver on the van; the horses were still standing up.

GEORGE PICKUP, a brickmaker, examined by Mr. HANNEN. Was near the arch, about the centre, when the van was approaching, and saw a number of pistols poked out from behind an abutment by men who were just within his view. Witness ran into the shop of Griffiths, a barber, on the Manchester side of the arch. Came out again, and saw men coming from both the neighboring public houses just as the van was coming to the arch. Several shots were fired as the horses got under the arch. Then the van stopped. Witness was behind it. In a few moments afterwards men got on the top, stones were handed from one to another in the crowd, and a large one, brought from a distance of sixteen or eighteen yards, was used to break the roof. At the same time he saw the prisoner Larkin hammer at the door, and the prisoner Allen fire through the ventilator. When the door opened, the deceased, Brett, tumbled out, and afterwards some women came out. Then Allen entered the van, and witness saw him come out with two men wearing handcuffs. Heard Allen say, "Kelly, did not I tell yez I would lose the last drop of blood for yez?" They went towards the Sheffield line. Witness followed, and saw Allen helping the men over the wall of the Midland railway yard. About a dozen seemed to have pistols, and during the twenty minutes or thereabout that the attack lasted, shots were fired so fast that he could not estimate how many were fired. Noticed Allen fire five or six times.

Cross-examined by Mr. SEYMOUR:

Allen fired at the ventilator immediately after the other man hammered the door. Would swear positively the words used by Allen were not, "I would die before I delivered you up;" he said, "I would lose the last drop of blood for you."

JOHN GRIFFITHS, the barber whose shop had been mentioned as being very near the arch, was then sworn, and examined by Mr. HIGGIN.

He had noticed some men on the embankment at the side of the road before the van came up. When it came up he saw the men rush on to the footpath; then he heard the report of fire-arms, and went to his shop. The van came to a stop. On going back to the van he saw Allen with two revolvers in his hand; was not quite sure that he had both in his hand when he stood by the door of the van. Saw Allen discharge a revolver at any one who happened to make a rush towards the van. Believed that there were three rushes towards the van by the police. Allen fired during the first rush. Afterwards, when witness, with policeman Shaw and other persons, including the man who was shot in the foot, (Sprossen,) went together under the archway, Allen met them, coming forward by himself with two pistols. Witness thought he fired, as he heard one report, and Sprossen received the shot in his foot. Afterwards saw Allen fire, as he thought, at the lock of the van door. Then the door opened, and Brett fell out. Some women came out next, and then one man came out, who seemed to be handcuffed. The moment he came out the men near the van surrounded him, and they all went off together towards the railway. Witness assisted to put Brett in a cab to go to the railway. Afterwards went to the van and found the brown horse had been shot. Witness noticed Maguire among the men attacking the van, but did not see him do anything. Believed from thirty to forty were engaged in the attack; it lasted about twenty minutes. About thirty or forty shots were fired, in all. Stones were also used to drive back those who attempted to interfere. Two men on the top of the van used stones in trying to break it in.

Cross-examined by Mr. SEYMOUR:

Could not identify the man who was hammering at the lock of the door before Allen fired at it. Saw no more of Allen after he fired at the van door. For anything witness knew, Allen and the other man had then gone away.

By Sergeant O'BRIEN:

Saw Maguire at the side of the van, wearing a white hat and clothes of a tweed mixture. Had identified him on several occasions among the other prisoners. Witness had been taken several times to identify—about eight times altogether.

Henry Royle, surveyor, was examined as to matters of distance and locality in connection with some ground plans that had been prepared of the neighborhood of the place where the attack upon the police van was made. He said, in cross-examination, that the distance from where the attack took place to the Midland railway wall would be 641 yards, of irregular open ground, with several mounds and depressions of the surface.

The witness Griffiths pointed out on the plan the situation of his barber shop.

Other evidence was being proceeded with when our report left, at half past 4 o'clock.

The following is a copy of the calendar of the prisoners for trial before the special commission: "William Gould, 30, well educated; William O'Meara Allen, 19, well educated; Edward Shore, 27, imp.; Michael Larkin, 30, imp.; Charles Moorhouse, 23, well; Patrick Kelly, (of Galway,) 35, N.; Michael McGuire, 32, imp.; John Martin, 34, imp.; John Brannon, 40, N.; John Francis Nugent, 22, imp.; William Martin, 35, well; John Carroll, 24, R.; Michael Joseph Boylan, 37, well; Michael Kennedy, 28, R.; Thomas Maguire, (soldier in royal marines,) 31, imp.; Henry Wilson, 27, imp.; John Bacon, 40, imp.; Patrick Coffey, 27, imp.; Thomas Ryan, 30, R.; Thomas Schalley, 22, imp.; Timothy Featherstone, 30, imp.; William Murphy, 25, imp.; Thomas Johnson, 30, N.; Daniel Redden, 25, imp.; James O'Brennan Chambers, 29, imp.; William Brophy, 26, imp." The word "imp." in the calendar means imperfectly educated; "N." that the prisoner can neither read nor write; "R." that the prisoner can read but not write.

[From the London Times, October 31, 1867.]

SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Wednesday.*

The court continued its sitting for an hour and a half later than the despatch of our report yesterday evening. During that time two witnesses were examined.

GEORGE MULHOLLAND, a quick-looking and rather sharp-spoken boy, who said he was twelve years of age, described what he saw of the attack on the police van. He was near the railway arch at three o'clock, and saw a number of persons on the bank by the roadside. They waited till the van came up, and the prisoner Allen was one of them. When the van arrived, witness saw a man—he thought it was the prisoner Larkin—run to the horses' heads and fire at them. He then saw either Allen or Larkin fire at the driver. Meantime more men were coming out of the public houses, loading their revolvers as they ran. Allen went to the back of the van and gave an axe-hammer to Larkin, who began hammering the door. Allen told a man to get on the roof and break it open; then the prisoner Thomas Maguire got on the roof and dropped a big stone upon it. Larkin tried to break open the door, and then ran to the arch with two revolvers, to meet some people who were coming that way. Allen then took the hammer and broke open the ventilator in the van door, while he held a revolver in his left hand. Allen next put the revolver to the ventilator and fired. A woman's voice inside cried, "Charley's killed." Some one outside demanded the keys, threatening to shoot the women if they did not hand them out. Then the keys were handed to Allen through the ventilator; Allen opened the door, the policeman Brett fell out, and the women came out afterwards. Finally two men came out and went across the fields. The whole affair lasted a quarter of an hour. Witness heard about a dozen shots altogether. Bricks and stones were thrown to keep people back. Between thirty and forty were attacking the van.

The witness gave some smart answers in cross-examination, but it also appeared as if there was some uncertainty about one or two of his statements. In answer to Mr. Digby Seymour's question, "Were you frightened?" the boy answered, "Wasn't I?" and when asked, "Why did not you take to your heels if you were frightened, or run to help the police if you were brave enough to stay?" The reply was, "I'm nowt to a man, or I might have done." Mr. Sergeant O'Brien also cross-examined the boy, prefacing one of his questions with the remark, "You're a very sharp lad, indeed."

Witness (grinning.) I'll be a lawyer some day. [Laughter.]

He was then questioned as to the deposition he made before the magistrates.

Mr. Sergeant O'BRIEN. Didn't you then say, "As the horses got through the archway a man who came from off the bank fired at the horses, and shouted out to the driver, 'Stop, or I'll blow your brains out.' Allen is that man."

Witness (smiling.) I might make a mistake as well as you.

I wish you to answer with more responsibility, and not with such sharpness. Didn't you say, "Allen is that man."

Witness did not answer.

Aye or no?—I don't recollect.

Oh, yes, you can.—No, I can't.

Didn't you say, "Allen is that man?" If you wish to be believed you can answer correctly. Didn't you say Allen was the man?—Not as I can recollect.

What! Don't you recollect what you swore on the 26th of September? I must have an answer. Didn't you say Allen was the man?—I can't recollect.

Were not the depositions read over before you signed them?—I didn't sign them then.

Can't you write?—Yes, I put my name down on a paper; but I didn't sign them then.

Weren't they read over to you?—Yes, before that.

When?—As soon as I went into court.

Mr. Justice BLACKBURN. Let me see the original depositions, to see whether the witness put his name to them. (To witness.) Your name is written there. Did you write it or not?

Witness. Yes.

Mr. Justice BLACKBURN. Was not the deposition read over to you before?

Witness. No. (After a pause.) Yes, it was.

Mr. Sergeant O'BRIEN. Pray attend; be careful. It was read over to you?—Yes.

Didn't you observe that you were made to say, "Allen is that man?"—I can't recollect. It might be right.

Mr. Sergeant O'BRIEN. But do you mean to say now that you didn't say before the magistrates Allen was that man?—I can't say. You may be right and I may be wrong.

But didn't you say Allen was the man?—I can't recollect.

Well, let me take you to another part of your deposition. "Allen went to the back of the van with a hammer and lent it to another man, and this man started breaking the door open. I don't know this other man." Did you say that?—I said it then.

But you say now that Larkin was that other man?—Yes.

But you had seen Larkin taken?—Yes.

And you saw him, I suppose, in prison before you were examined?—I was taken to Albert street and saw Larkin there.

How often did you see him before you were examined?—Twice.

Then explain what you meant by saying, "I don't know this other man." (A pause.)—I may have thought it over since then.

Did you talk to anybody about it?—No; only to my father.

I am not speaking of your father. How would thinking over it help you?—Because I took notice of the clothes, and then I saw which man it was.

A witness named GEORGE BECK, a railway clerk, who witnessed the attack, was next examined. He said he attempted to pass through the arch at the time, when he was stopped by Allen, with whom he saw several other men, among them Larkin, Gould, and Maguire. Larkin was breaking the top of the van with a stone. Gould and Maguire threw stones at the police. Allen fired through the ventilator. He had also tried to break open the door, and witness thought he had a hammer.

By Mr. Sergeant O'BRIEN. Maguire wore a white hat.

Before the rising of the court Mr. Justice Blackburn complained of the noise caused by persons who were without seats, and on being informed that in a portion of the area there were no seats provided, his lordship said this arrangement was highly improper in a court of justice; every spectator admitted should be seated to insure quiet.

At 9 o'clock this morning the trial was resumed. The only departure from the arrangement adopted on the previous occasions was that the guard of infantry consisted of the 57th regiment, instead of the 72d Highlanders, and that five prisoners only were brought down from the jail this morning instead of the total number as hitherto.

The following additional evidence was given:

JOHN KNOWLES, grocer, who had been near the railway arch, coming from the Manchester side, on the day of the attack, deposed that he saw about fifty men surrounding the van. One man was on the roof breaking it in with a stone. That man was not now among the prisoners. Allen was at the back trying to break open the door with an axe. He also fired in through the door. Witness was behind the door, at about five yards distance. Saw the door opened and Brett fall out. A man was handing up stones to the top of the van; that man was not among those now in the dock. On seeing the nature of the attack witness ran home, a distance of two hundred or three hundred yards, for his revolver. On returning he found that the attack was over, and that the assailants were trying to escape. Allen, Larkin, and Gould were among those running away. Allen presented two revolvers at the crowd. Larkin was caught a little further on, and somebody cried out that Allen, who was then upon a wall, was going to fire. Witness thereupon took out a small pocket-piece, a revolver, and fired. After doing so he again gave chase, and Allen was ultimately caught. Before witness went home saw Gould with a revolver in his hand. At the time Sprosson was hurt there was a rush; witness was in it with the police. Heard a report, but did not see who fired the shot, for his eyes were on the road where Brett was lying.

Cross-examined by Mr. SEYMOUR:

Would swear that he was not ten yards from the back of the van. Was dodging about from the stones. First saw Gould afterwards in custody. He was not chained to anybody or handcuffed. Saw a chain on the floor, but thought he was playing with it.

Mr. SEYMOUR. Do you mean to swear that you thought he was playing with a chain?

Witness said he passed no particular remark upon it. The chain might have been fastened to the wall. Gould was next to the chain. Had declined at first to identify a man named Redding; afterwards did identify him. Knew a gas collector, but not otherwise than coming in to measure the gas. Had no conversation with such a person about Fenianism, or say that he should be glad to be the means of hanging a Fenian. He should be sorry to do so. Made use of no such expression to anybody. Would not swear whether Allen was standing in the road or on the steps of the van when he used the hammer. Could not swear whether he was on the steps or not when he fired; thought not. Witness was a little excited but not frightened.

Cross-examined by Sergeant O'BRIEN:

There were a great many people running away. Had not seen Larkin before that day. Had seen him at the back of the van trying apparently to raise the ventilator.

WILLIAM HUGHES, engine fitter, deposed that he went to the Hyde road on Wednesday the 18th, with a friend of his, a photographer, about 11 o'clock, and remained till the van came up. In a public house under one of the railway arches he saw about twenty persons assembled that day at 1 o'clock, and half a dozen others outside the house. Allen, Larkin, and Maguire were among those persons. He did not see the prisoners all at the same time, but at different times. Afterwards witnessed the attack upon the van by a number of men. Allen, Larkin, and Maguire were among those firing at the van. Larkin got in front of the horses, and immediately afterwards a voice cried "Stop!" Saw Allen on the top of the van and Maguire handing him up a stone. Afterwards saw other men on the top of the van hammering with stones. There was a ventilator in front of the van. Saw a man hammering at this and then he fired. The van had more than one ventilator, and he fired at the one on the left-hand side. Saw the women and men escape from the interior of the van after Brett fell out.

In reply to the Court, Mr. Seymour said there was no controversy raised on the part of

the prisoners as to the fact that two handcuffed men escaped from the van, and that those men were Kelly and Deasy.

The witness went on to state that he saw Allen fire towards the crowd, and afterwards saw a man limp away. Did not see Allen taken.

Cross-examined by Mr. SEYMOUR :

Had not stated that he saw Allen taken. (Portion of his deposition read : "I followed with others and saw Allen taken ; he had a pistol in his hand and dared persons to follow him. Saw Larkin in custody.") Meant that he saw them both in custody. He did follow with others, but did not see Allen taken.

Mr. SEYMOUR. Recollect yourself. You say with deliberation that you followed with others. Did you or did you not see Allen taken ?

Mr. Justice BLACKBURN. As far as the fact of following goes there is no contradiction in his evidence.

Mr. SEYMOUR. No, my lord ; but there is as to the fact of seeing Allen taken.

Mr. Justice BLACKBURN. Well, that of course, you will put in your argument to the jury. He says he followed, and that he saw both men in custody, and as to that there is no contradiction. You may, of course, argue to the jury that there is a contradiction with respect to Allen's capture.

Mr. SEYMOUR. With great respect, my lord, what is my argument worth if your lordship by anticipation neutralizes it ?

Cross-examination continued : I signed the depositions. They were not read over to me. I believe they were read over to the court. I might be included. Before I signed I was not aware that my particular attention had been called to them. I identified a man named Sherring. I was as certain of him as I was of any others. That man has been discharged. I am not aware that the ventilator in front communicates only with the cells, and not with the central corridor. I saw the man put his pistol to the hole of the ventilator. The ventilator was hammered at but was not broken. The man had his back to me. He was standing on the ground. When he fired he put his hammer in his pocket. Did not know who that man was ; he had a velvet collar to his coat, and was about 5 feet 7 inches or 5 feet 8 inches in height.

Cross-examined by Mr. Sergeant O'BRIEN :

The neighborhood behind the public house where I saw the prisoners is pretty populous.

A discussion here took place with regard to what the witness had said about Maguire's handing up a stone, or stones, to Allen ; one of his answers creating the impression that he could not say whether the stone was intended for Allen's use or not.

Mr. Justice Blackburn said it would be right to read the whole passage to the jury. The witness had completed the sentence by stating that other men got on the top of the van and hammered at it. His brother, O'Brien, intended to be quite fair, but it was right the jury should have before them the whole of what the witness had said.

Mr. Sergeant O'Brien maintained that he not only intended to be quite fair, but was quite fair in his examination of the witness.

Re-examined by the ATTORNEY GENERAL :

After he had given his evidence in the police office, his deposition was read over. He did not know the man's name who did so. After it was read over witness was told to come down and go into a sort of pew, where he signed the paper.

GEORGE MOORHOUSE, a warehouseman, deposed that at ten minutes to four on the afternoon of the attack he was standing about 400 yards on the Manchester side of the arch. The prison van had gone by. In about three minutes witness went through the arch and saw the prison van stopped, and persons running across the brick-croft. Among these were Allen, Gould, and Larkin. Allen had two revolvers in his hands, which he presented at a brickman.

Cross-examined :

Gould was about twenty yards from witness when he saw him first. His back was towards him. The Midland yard, where he assisted in taking Allen, Larkin, and Gould, was a quarter of a mile from the van. Assisted in taking Allen. Did not hear him say anything then. Was foremost among those who were running.

THOMAS BARLOW, examined by Mr. HANNEN :

Deposed that he was at work in the Ashtown road on the afternoon of the 18th, and saw a crowd running towards the railway arch about half-past 4 o'clock. Thought it was "a pitch in," or two carriages running into each other. (Laughter.) Went towards the railway station himself then and saw two men walking arm-in-arm ; those men were the prisoners, Allen and Gould. Put out his hand to catch Allen, who said, "If you come a step further I'll blow your brains out." He had a revolver in his hand when he said this. Witness told him to put it down if he had not done any mischief, for if he had he was sure to be caught. Gould said to Allen, "Come along ;" and, the crowd coming nearer, some one shouted, "They have killed a policeman." Allen ran away, followed by witness, and discharged his pistol into a field. When the crowd came up a man struck Allen upon the head, which

caused the blood to spurt out upon his frock. Witness said it was "a — shame," and protected Allen.

Cross examined by Mr. SEYMOUR:

Allen did nothing that he saw beyond discharging his pistol into a field, so that he might do no harm.

EMMA HALLIDAY. I was being conveyed as a prisoner in the van on the 18th of September. Beside myself there were five women in the alley of the van. Brett was also there. When the van was stopped the first thing I heard was a stone thrown against the van. Afterwards I heard a pistol fired. This appeared to be in front of the van. Brett thereupon looked through the ventilator, and when he had done so said, "Oh, my God—Fenians!" Had not previously heard any noise at the door. The women thereupon began to scream. Did not then hear anybody ask Brett for anything. The women began to scream, but he told them not to make a noise. Somebody began to knock at the door behind. Another man got on the top beside the one at the door and began breaking in the top with a large stone; a hole was made in the top of the van over where Brett stood. Some of the women caught hold of Brett and told him to come away or he would be killed. He stepped back to avoid the stone falling on him, and as he did so another stone was forced in through the flap and prevented his closing it again. Till then he had been holding it fast. The stone did not fall. A man came to the door and asked for the key. Brett said he would not give it. I did not not see that man's face. The man said again, "If you give us the keys we will let the two men go and do you no harm." Brett said, "No: whatever happens I will stick to my post till the last." Brett was then looking through the upper part of the ventilator. I was looking through the lower part, and saw a pistol presented right through the trap, through the opening of the swivel door. I caught hold of him and said, "Oh, Charley, do come away; look there!" I caught hold of his coat behind to pull him back: as I did so his head came on a level with the pistol: it was discharged and he fell. I saw the man who fired that shot. (Identifies Allen as the man who fired the shot.) When the door is opened, and we inside are in a stooping position, we can see all that goes on outside. The door was open, and I was in a stooping position. The stone was still in the ventilator when the shot was fired. After Brett fell, a man came and asked for the keys: I don't know who he was. We told him we dare not give him the keys. He put a pistol to the opening and told us if we did not give him the keys he would blow all our brains out. When Brett fell I went away from the door, and so cannot speak as to the man. A woman took the keys out of Brett's pocket, and handed them out through the opening. There were two men outside, but I cannot tell which of the two received the keys. The van was then unlocked. I should not know either of these men. I could only see their coats. Brett fell out; one of the women was nearer the doorway, and that prevented us getting out for a moment or so. I tried to get to the police, who were under the arch, but there were so many stones that I ran away and went straight to the Bellevue jail. I could not speak to any other of the prisoners being present. The attack lasted about 10 minutes as it seemed to me: a great many stones were thrown. I heard three pistol shots fired distinctly.

Cross-examined by Mr. D. SEYMOUR:

I cannot tell who was put in the van first. I was put in last but one. I was not in a cell but in the corridor. I have no idea in which of the boxes Kelley and Deasy were. Brett was standing. There was no accommodation for him to sit down. He was standing near the door: right at the end furthest from the door there is a seat, but I have never seen a policeman sit there. The shot that killed Brett was not immediately after the hammering: should think it was three or four minutes. We were all close to Brett; there were five or six women inside. We were talking to each other close before the attack began. We were very much frightened; some of the women stooped down on the floor. I saw the pistol before I pulled Brett. I gave him a sudden pull: as he came down the pistol went off. I caught hold of both the skirts of his coat with both hands, and pulled him back as hard as I could. I did not, before the magistrates, swear that Allen was the man who asked for the keys. I don't think I did. I believe I said from the first that I could not swear to the man who asked for the keys.

Mr. DIGBY SEYMOUR. I will read what you swore at the police office. "As soon as Brett was shot, Allen came to the door and asked"—

Mr. Justice BLACKBURN. I wish you would begin reading a little earlier, Mr. Seymour, and then the gentlemen of the jury will see—

Mr. DIGBY SEYMOUR. With great submission, my lord, I am entitled to test the witness's accuracy on any special point.

Mr. Justice BLACKBURN. In strictness, the whole deposition should be read.

Mr. SEYMOUR. My lord, I am reading a passage from a deposition made by this witness, and if I am doing anything which can be considered unfair the attorney general will put me right.

Mr. Justice BLACKBURN. No, it is my business to see that the proceedings are regularly conducted.

Mr. SEYMOUR. I have no intention of committing any irregularity, nor am I aware that I have done so.

Mr. Justice BLACKBURN. I do not say that you are conducting the case irregularly, but what I do say is, that in the view, at least, which I entertain of my duty, sitting here to try this case, it is my duty to see that no questions are put to the witnesses in a form which is not strictly regular, or which is calculated to convey a wrong impression to the jury.

Mr. SEYMOUR. I hope I shall not be thought to be acting otherwise than respectfully to the bench, but I must make this observation. If on every occasion when I am putting a question to a witness for the sake of contrasting what he or she has said before with what he or she is saying now, and if in every such case there is a correction or an interposition from the bench, it conveys an impression to the jury—it is unfortunate certainly, but it cannot fail to do so—that I am putting questions unfairly.

Mr. Justice BLACKBURN. I can only say that when a question is put as to anything which a witness has formerly said, I consider it my duty as presiding judge to see that the whole of what was actually said on that point is read out, so that a complete impression may be conveyed to the jury.

Mr. SEYMOUR. I will read the whole passage from the deposition, if your lordship desires me. "He fell against the door. I could not see the man who fired the pistol, and I have seen him since at the city jail. The prisoner Allen is that man. As soon as Brett was shot, Allen came to the door, and asked us for the keys."

WITNESS. I said "a man," and not "Allen."

Mr. SEYMOUR. Then they have put "Allen" into the deposition.

WITNESS. They have. I said "a man," and not "Allen." I can write. I signed the depositions. My evidence was read over to me before signing. Those words were read over to me, but I never noticed that the word "Allen" was introduced. I will swear I said "a man" and not "Allen." I saw Allen next as a prisoner in the jail, while I was under remand. I was told not to mention it till I had seen the prisoners. Mr. Fowler gave strict orders that nobody was to converse or say anything to me until I had seen the prisoners. One of the detective officers took me to where Allen was. He was not ironed. I did not know anything about the reward at first, because I was locked up. First knew of it when I went down to the police office. It was talked about in the witness's room the first day I came down to give evidence. What was said was that there was a reward of £200 for anybody who would give evidence as to the murder of Charles Brett. That was talked about freely in the morning. I know the inside of a police van well. I was under remand on a charge of felony, after two previous convictions.

Re-examined by the ATTORNEY GENERAL:

I identified Allen on the Tuesday or Wednesday, and he was first examined on the Thursday. I had not at that time any notion that a reward was offered. The pistol was not placed through the opening of the ventilator where the stone was, but on the other side; when the swivel is open there are two sides; it turns on a central pivot. Brett was standing with his body opposite the middle of the ventilator. [A model of the van was here handed in, and the witness explained by reference to it how Brett was standing when this shot was fired.]

JOHN LITTLEWOOD deposed that the model had been constructed by him upon the scale of one inch to a foot. The door might be about an inch and a half thick. An ordinary railway carriage key would open the door from the outside. There was no lock on the inside. Witness described in detail the marks of violence upon the top and sides of the van. The roof was of wood and canvass, strengthened with iron.

Mr. Seymour drew the attention of the court to the fact that the front ventilator, through which one of the witnesses had stated that a shot was fired, did, in fact, open into the cells for prisoners, and not into the central corridor.

ELLEX COOPER. I was in the prison van on the 12th of September, being taken to the Belview jail on a charge of felony. I was next to the man who was shot. When the van was stopped it was struck many times with pistol shots and stones. The top of the van was broken in with a large flagstone, and a piece of iron in the roof was forced down into the body of the van. I heard three shots fired in all at or into the van; the last of them was the one that killed Brett. One of the bullets passed closely over my bonnet. After Brett was shot the little door was opened. Allen came and put his face to the door, and with a pistol in his hand, said, "Get me the keys, or I will shoot you!" The keys were handed out and the door opened. Noticed that a flagstone was still stuck in the ventilator. When the door was opened Brett did not fall out; he still remained in the same attitude—"loupé" down. I was pulled out over him. There were plenty round the van throwing stones at the police and at the van. I did not go to the police. I was stoned back, and could not reach them. I went over the roof. I did not see any of the five prisoners when I got out of the van. As I was going towards the police a man said to me, "Go that way, or you will be killed." I do not see that man in the dock.

Cross-examined by Mr. SEYMOUR:

I was next to Brett, and had hold of him. It was I who pulled him back. I was the only one who had hold of him. I pulled him back as strongly as I could. It was before the shot was fired that I pulled him. My hand was not on him when he was shot. No one's hand was on him when he was shot; nobody's hand was near him when he was shot; no woman pulled him back. There were sawing pieces of wood in the roof, and the shot came

through them. He was standing straight up when he was shot; he was not stooping till he was shot. I heard a voice saying, "Let them out;" Brett did not say a word in reply.

Re-examined by the ATTORNEY GENERAL:

I did not see the pistol put through the door; it was when the hammering was on the roof and at the back of the door that I pulled him back.

JOSEPH PARKINSON, aged 12, deposed that he was in the prison van, having been committed for taking a shilling. Was in the third box from the horses, and a man was with him; his box was on the right-hand side. There was a door to his box with a ventilator in it, through which he could see into the alley. After the attack had lasted some time, he heard one of the women in the alley say to Brett, "Charley, you'll be shot if you don't deliver the keys." He said "he dursn't." After that a shot was fired at the back of the door. The women were sitting down and kneeling down. After the shot saw a man come into the van; he had a whitish coat, a brownish hat, and a blue tie on. (Identifies Allen.) He said, "Where's Kelly?" The man in Baxter's box, which faced the box witness was in, said, "Here!" The man in the passage was going to open Baxter's box, when another voice said, "No, he's here"—speaking of a box at the same side with witness. Saw the man trying two wrong keys, and then he opened the door with the next one. He opened the top box at the left-hand side. Witness could not see the other box which he opened; could not say whether he opened a second box. Two men then went out handcuffed. Witness went out to the jail in the van. In the middle of the van he picked up a bullet. It was in the alley, not in one of the boxes. Gave it to Constable Knox.

Cross-examined by Mr. D. SEYMOUR:

Had only seen Allen once since until to-day. That was in the police office, and he was then in the dock. Told the magistrate that Allen had on a whitish coat and a brown hat. Was sure he had done so.

Mr. D. SEYMOUR. Of course, I can only take that as in the other cases. But I can find nothing about his dress in the depositions.

Mr. Justice BLACKBURN. He speaks of a bluish tie.

Mr. D. SEYMOUR. Oh, yes, my lord, he speaks of that, but not of the other things.

Mr. Justice BLACKBURN. You are quite right; he does not mention the hat or coat.

JOSEPH POWELL, an officer of the city jail, deposed that in consequence of an alarm which reached the jail on the 18th of September he went down to the prison van. The prisoners had then been released. Followed the crowd and saw the prisoners going off with their friends. Could only distinguish two of them particularly—Allen and Gould. They both went up the embankment together, and on reaching the top Allen turned round and fired off his revolver twice. Larkin was caught in the Midland railway goods yard, and was surrounded by a crowd who were abusing him. Witness forced his way through and seized him, told the crowd to let him alone, and handed him over to the police. Allen ran into the arms of some half dozen persons, who wrested his revolver from him and handed it over to witness. Next morning Inspector Anderson called for and obtained it. When handed to witness there were one or two charges in it, but no caps on any of the nipples. Could see from the state of the nipples that some of the barrels had been recently discharged. (The revolver was produced, together with the two charges which had been drawn from it; the revolver loaded from the chamber and not through the muzzle.)

Cross-examined by Sergeant O'BRIEN:

The crowd ill-used Larkin; as soon as witness took him into custody a man hit him in the mouth. Larkin did not say anything about giving himself up.

THOMAS ANDERSON, superintendent of police, deposed that he drew the charges from the pistol. The cartridges with which it had been loaded were not regular cartridges, but home-made. The pistol had remained in his possession.

MARK BAXTER, another of the jail officers, deposed that he saw Larkin, Gould, and Allen together. Interfered, with the last witness, to protect Larkin, and then pursued the other two. Saw a revolver in Larkin's hand. He presented it at witness and snapped it twice, saying if he stirred another step he would "scatter his brains." He pulled the trigger twice, but the pistol did not explode. Witness therefore seized a piece of brick and threw at him, but it knocked down Gould instead, who was thereupon taken into custody. Left Gould with Mr. Sykes and pursued Allen, who ran into the arms of two or three men who came from the road.

JAMES HENRY BAXTER, a boy now confined in the Industrial School, who was in one of the cells of the van, deposed that he heard some one on the outside ask for the keys. Brett said he dare not give them up. After that heard a pistol go off at the back of the van and a woman say "Charley's shot." After that it became very light in the alley of the van; a man walked in and said, "Kelley, where are you?" (Identifies Allen as the man who came into the van.) A man in witness's box shouted in answer to the question, "He's here." After that a man on the opposite side of the van cried "He's here." The man who came in tried two keys first, and then succeeded in opening the door. He then crossed the alley and witness could see no more. After that saw three men leave the van. Heard one pistol

shot after they did so, somewhere about the door. The two bottom cells nearest the horses were those which were opened.

This witness was not cross-examined.

JOHN LITTLEWOOD was recalled and stated that the ventilators in the inner doors were slits opening upwards as a person stood in the central passage, so that a prisoner in one of the cells would look downwards through the ventilating slits.

Some importance being attached by Mr. Seymour to a correct understanding of the internal arrangements of the van, the jury were sent under escort of a bailiff to examine the van itself, and the proceedings were interrupted for some minutes for that purpose.

MATTHEW KNOX, one of the constables who accompanied the police van, deposed that after the van was stopped, he heard cries of "Turn up those keys; let them out." He also heard a cry as to blowing out brains. His post and that of another constable was on the foot-board behind. A shot was fired, and the bullet appeared to whistle between his face and the side of the van. Heard two other shots. Jumped off the step then and ran towards the horses' heads. On going to the steps he found men trying to break in the door with a large stone. After the affray was over, a bullet picked up by one of the boys in the interior of the van was given to him. A man presented a pistol at him but did not fire.

ELIZABETH ROBINSON, a lady who was coming to Manchester along the Hyde road when the attack on the van was taking place, stated that she saw Allen there with a revolver in each hand. Gould was also there with a revolver.

Cross-examined :

Saw neither of them do anything. Did not know either of the prisoners before. Had not been able to identify them at the police station, but afterwards recognized them among the prisoners before the magistrates.

The witness was seized with faintness on coming into the box, and gave her evidence with some difficulty in consequence.

JAMES MAYER, a barman, was at his sister's in Hyde road when the attack was going on. The house was within one hundred and sixty yards of the arch, on the Manchester side. Saw a disturbance and went up to inquire what it meant. Found Allen and Larkin hammering the van door. Saw Sprossen shot by Allen.

Cross-examined by Mr. SEYMOUR :

Saw only two men come out of the van after the door opened, and Brett fell out. Last saw Allen when he stood at the van door, outside, just before the door opened. Believed that Allen aimed at the ground when he said to the people "Stand back!" and Sprossen was shot in the foot.

By Mr. Sergeant O'BRIEN: Saw Larkin through the arch from a distance of fifty yards on the other side. Ten or fifteen persons were round the van, between witness and Larkin.

THOMAS SPERRY, employed by the Midland Railway Company, said he was present when the fugitives were getting over the wall of the railway yard, and witness laid hold of Larkin. Allen and Gould were there also. Saw Allen with others get to the wall and assist some one over, whom witness had previously noticed carrying a coat so as to cover his hands. One man on the top of the wall pulled him up while others lifted him, and he lay flat on the wall. It was after this that witness saw Larkin coming, and he captured him.

By Mr. SEYMOUR: Could not say how many were helping the man over the wall, but noticed one on the wall and two below it.

By Sergeant O'BRIEN: Should know the man again who was on the wall, but he was not one of the prisoners in the dock.

By Mr. SEYMOUR: Had been in some doubt as to Allen's dress when he first recognized him at the police station.

HENRY WILSON SLACK was riding on an omnibus a few yards behind the police van when the van was stopped and attacked. Witness saw Maguire there. Allen was running about with revolvers. He also shot behind the van, firing at the door, and he shot a man in the foot.

JOSIAH MUNN, who was driving the omnibus on which the last witness was riding, said he saw Allen and Maguire among the men round the van. Allen ran from the bank with two revolvers and stopped at the back of the van. He fired at parties coming under the arch to keep them back. Witness did not see it done more than once. Afterwards he opened the ventilator and shot through it. Witness sat on his omnibus all the time. Saw the keys handed to Allen through the ventilator, then the door was opened. Brett fell out, Allen entered, handed two men out, and then stood a few moments while the men made off. After firing one shot he followed the men across the field.

Cross-examined by Mr. SEYMOUR :

The omnibus was about forty yards off. Saw all that he had described from that distance. Saw by the motion of his mouth that Allen said something to one of the men who came out. Could see this from forty yards off. Could not remember whether he ever said before to-day that Allen opened the ventilator. Believed he did say he entered the van. [Neither of these statements appeared on the depositions.]

In reference to an observation of the learned counsel.

Mr. Justice Blackburn said that comment upon the difference between what the deposition contained and what the witness now said should be reserved for the counsel's address to the jury. The depositions did not say whether the witness made those statements or not; but certainly the depositions did not contain the statements.

HANNAH PENNINGTON, wife of the keeper of the Halfway beer-house under the railway arch, narrated the circumstance of some men coming to her house on the day of the attack, an hour or two before it took place. There were about a score of men in one room at three o'clock. Allen was one of them. Witness did not notice whether they were talking or doing anything together. The window of the room looked down the Hyde road towards Manchester. The men left the house in a body. Some time before they left, a man not in the dock came in also. The attack on the van was not more than five or six minutes after the men left in a body.

WILLIAM CARRINGTON, a policeman, was on the Hyde road, and met the van when it was three hundred to four hundred yards on the Manchester side of the arch. Did not see the van stopped, but on hearing something he turned back, went up to the van, within a few yards, and saw Allen, who pointed two revolvers at him. Saw Allen shoot Sprossen in the foot.

Mr. BATTY, a gentleman who was riding with his family in a cab a few yards on the Manchester side of the arch, said that on hearing a sound like fog signals, he looked out of the window, and seeing the disturbance he took his wife and children into a shop for safety. Then went to the arch, and saw Larkin and Shore there with others. Larkin was throwing stones. Shore was at the door of the van in a sitting posture, and seemed in the act of lifting a stone, but had not a stone in his hand. A large stone fell on Shore's neck apparently.

By Mr. SEYMOUR: He seemed to stagger away as though he was hurt, and witness therefore judged the stone had hit him. He supposed he was then giving orders to men on the bank, judging from the direction of his eye and the raising of his hand. Did not see him put his hand to his head. The men at whom he looked at once threw stones at a policeman, and one was near hitting the witness.

The evidence was proceeding when our report was despatched, shortly before five o'clock.

[From the London Times, November 1, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Thursday*.

The concluding evidence last night was partly described by a telegram which appeared in *The Times* of this morning. A witness named Robert Hunter, a laborer, identified Allen as having shot through the ventilator of the van, and heard two men tell him to fire, but those two were not in the dock. The witness afterwards saw Larkin running over the fields.

SETH BROMLEY, the constable who was shot, said: I am still unwell. I was not examined before the magistrates in consequence of the wound I received. On the 12th of September I went with the police van, and sat on the left of the driver. When we got to the railway arch I saw some men there, and almost immediately the horses were shot at. I saw from twenty to thirty revolvers. We all jumped down. Before we did so three shots were fired up at us. A man called Taylor was beside me, and got down before me. I rose from my seat for the purpose of getting down after him. As I did so I noticed Allen with a revolver in his hand, pointing it towards me. He stood on the footpath, on the left-hand side. The van was at that time near the curb. I raised my left hand, and the pistol was fired; it took effect and wounded me through the thick part of my left thigh. I was the last to get off the omnibus, so far as I know. I was confused for a time after I got off. I got on to the footpath on the left-hand side. I turned round and looked towards the van again, and saw Allen on the top of it. He was stooping down to get hold of a stone on the footboard, which was being handed up to him by Gould. I saw Allen strike the top of the van with the stone. He put his hand down, pulled out a piece of timber, and threw it down. While he was on the roof, I saw the police and about forty to sixty people near the arch; a number of men with revolvers were keeping them back by firing among them and throwing stones. During this time as many as thirty shots were fired. The people were prevented from getting near the van. After I passed through the arch, I saw Allen get down from the van and saw Gould at the side of it. I then got under the arch, and my back was to the van for a time. I turned round and looked towards the door of the van, when I again saw both Allen and Gould. Allen had an axe-hammer in his hand, striking at the van handle. He remained there for some time, using the hammer. I saw Constable Trueman run up towards the van, and Gould ran at him and pointed a pistol at him. I was disabled, and could give no assistance. Gould chased him to right opposite where I stood, on the Manchester side of the arch. Trueman stooped down, and Gould fired, the bullet grazing his back.

The ATTORNEY GENERAL. It went through his coat!

Mr. SEYMOUR. No, no. He says it grazed his coat. We are in a position which makes it difficult to say anything. We have not been furnished with a copy of this witness's evidence.

The ATTORNEY GENERAL. I only got a copy this morning.

Mr. SEYMOUR. Surely, Mr. Attorney, I ought to have had a copy.

Mr. Justice BLACKBURN. As a matter of courtesy and fairness it is usual to furnish a copy of new evidence to the defence, but it is not a matter of right.

Mr. SEYMOUR. My lord, a practice sanctioned by the merciful usage of years becomes something like a right.

Mr. Justice BLACKBURN. You will have an opportunity of cross-examining the witness, and I cannot do more than that.

Mr. SEYMOUR. I do not complain.

Examination continued:

After the shot had been fired, Gould ran back to the van. I got into a cab, and drove to Fairfield street, where I got some constables and returned to the spot, but by that time all the people had gone. I was then taken to the infirmary, where I remained over three weeks.

By Mr. SEYMOUR: I was not in uniform, nor was Taylor. I did not see whether Allen remained in the same position after he shot me or not. I first saw Gould when Allen was on the footboard. He was on the near side of the van, and I saw him raise a heavy stone. I never saw either Allen or Gould before. I saw them in custody on Monday night for the first time since the affray. They were in charge of officers, and were being removed to the prison van.

By the ATTORNEY GENERAL: It was as they were going to the van with others that I identified them. I did not know their names.

JOHN THOMPSON, police constable, one of those who were in a cab which followed the van, gave evidence principally to identify Shore, who was engaged in throwing stones at the police when witness observed him.

KATE REILLY, who had been a prisoner at the city jail, said she saw Allen and Maguire among the men surrounding the van.

CHARLES THORNER, plumber and glazier, described the beginning of the attack as he witnessed it, and said: I saw Allen, Larkin, and Shore there. Allen was smashing the back of the van in, and firing a pistol. I saw him put the pistol through the ventilator as if to take aim, look through the ventilator, and then fire. He had also a hammer in his hand, with which he tried to smash the back of the van in. Larkin was on the top of the van once, and was throwing stones at the crowd. I saw Shore throwing stones, and firing a pistol at random.

By Mr. SEYMOUR: I had never seen Shore before. I could not swear to how he was dressed, closely as I did watch him. I was taken to identify him in custody on the 19th. I saw him at Bridge street. I did not notice that he was in irons. I did not hear his voice, and have no other means of identifying him but what I have stated. The man who shot the horse is not here. I did not take particular notice of that man. Allen was firing at any one who came near, at random.

[The witness's deposition was read, from which it appeared that before the magistrates he referred to Allen merely as having fired through the ventilator.]

Witness said: I was not asked about Allen putting the pistol through the ventilator and taking aim when I was before the magistrates.

Mr. SEYMOUR. It did not strike you as important?—No, it didn't; but still it was in my mind.

Mr. SEYMOUR. But you did not think it of sufficient importance to mention it?—I thought it would do somewhere else.

Mr. SEYMOUR. Therefore, having it in your mind, you kept it back?—Yes.

Mr. SEYMOUR. And you now expect to have it believed?—Well, sir, it is the truth.

Mr. SEYMOUR. Yes, it is the truth, and the placard of a reward of £200 is the truth. Did you see it?—Yes.

Mr. SEYMOUR. Did you read it through?—Yes.

Mr. SEYMOUR. From beginning to end? And you saw the £200 clearly, and no mistake about it? Your memory has wonderfully improved.

By Mr. Sergeant O'BRIEN: I was present when Larkin was taken, but I was not one of those who took him. I did not strike him, but others did. That was not the first time I saw Larkin. He was on the top of the van, looking up and down, and doing nothing in particular. He was not on the top of the van above ten minutes. I am sure it was above five.

By the ATTORNEY GENERAL: I had seen Shore before in the neighborhood of the attack. He was with others lurking about. When I was before the magistrates I gave answers to the questions that were put to me. I learnt about the reward the day after I had identified him. Until then I did not know there was any reward out.

The court then adjourned.

At 9 o'clock this morning the court sat again, and the case for the prosecution was resumed. RICHARD SPENCER, a hawker, deposed that he heard one pistol fired by Allen. He ran at the policeman before firing. Saw both Larkin and Gould there. Larkin was throwing

stones on the other side of the arch. Did not see Gould do anything, but helped to capture him the other side of the Ashton road.

Cross-examined by Mr. SEYMOUR: As near as the witness could tell, the shot he heard was the last shot fired. Had never seen Larkin before.

WILLIAM HULLEY, examined by Mr. PICKERING: I keep the Railway Inn, on the Hyde road. I saw about fifty men around the van, and some of them had pistols. Allen was one of them. He fired one of the pistols at me and my wife. There is the mark of the bullet on my house. Allen was at the abutment of the arch when he fired; he was only the width of the street from me. A brickbat was thrown at Allen as soon as he had fired. Allen then fired again, and the shot struck Sprossen on the foot.

Cross-examined by Mr. SEYMOUR: I was making my way towards the van, and was on the spot about a quarter of an hour. I don't know that they had any evil intentions towards me in firing at me. I had previously locked the door of my house. It would not be more than four minutes after Allen fired the shot at me that Brett fell out of the van. I have not before mentioned that I saw Sprossen shot. I was excited and upset before the magistrates, and did not mention the fact.

JOHN TAYLOR, detective, examined by Mr. SOWLER: As we approached the arch I saw some men peeping through it. When we got through the arch there was a crowd standing in a straight line on the footpath, forming a triangle. Some had pistols, and stood apparently so that they could fire betwixt the others. Three or four shots were fired. I was struck with a piece of brick on the left side, and fell back on the van. I saw the prisoner, Allen, with a pistol in each hand, making a rush across the archway at the people on the right-hand side of the arch, and then run away.

Cross-examined: When I was before the magistrates I swore to a man named Foley distinctly and positively. He was discharged by the magistrates.

HENRY SPROSSEN, employed at St. Matthew's Church, in Hyde road, saw some constables near the corner of Railway View, asking the people to give assistance against the persons who were breaking into the van. Was asked and gave his assistance. Went up to the middle of the arch, when some one called out, "Come back, you fool! come back!" When he heard that he turned round. Felt himself shot, and limped back as fast as he could.

WILLIAM TRUEMAN was one of the officers who followed the van in a cab. It stopped just before they got to the arch. Before that heard three shots fired. Got out directly and went towards the van. They were met by ten or fifteen men with pistols, some of whom came from the right-hand side, and others from the back of the van. There were also about fifteen men with stones. The police were forced back along the road. Allen had pistols, and shot at them. Went forward again, and saw Allen and Shore at the back of the van. Allen fired through the ventilator, and witness heard a woman's voice cry out, "He's shot!" After firing, witness saw Allen look through the ventilator. The police made another charge towards the van. Brett fell out. The police were again driven back, and witness was struck by a bullet below the left shoulder, which bruised his side and made a hole in his coat. Saw Deasy coming out of the van. Kelly was by this time on the embankment. The police made another rush, and Allen and others drove them back again. There was one shot fired that hit Sprossen, but did not know who fired it. First saw Shore on the embankment throwing stones at the police. Then saw him at the back of the van throwing stones. Saw him three or four times, and on each occasion he was throwing stones. Took Brett to the infirmary.

Cross-examined by Mr. SEYMOUR: Only saw Allen fire once through the ventilator. He had one foot on the step when he fired. He had a pistol in his right hand. Did not observe anything in his other hand. All that Shore did was to throw stones, and that was before Brett was shot. Saw him in custody the same night.

JOHN RAWSTON WOODCOCK, the house surgeon at the Royal Infirmary, remembered Sergeant Brett being brought in on the afternoon of the 18th of September. Saw him about ten minutes to five. He was suffering from a bullet wound which had passed through the right side of the head. It apparently entered the head above the right eye, and passed out of the right side of the crown of the head. He never spoke; he was unconscious, and died about half-past five from the effects of that wound.

Cross-examined by Mr. SEYMOUR: Saw the prisoner Shore on the 30th of September. There was a wound on the side of his head. Heard Mr. Batty speak of a large stone falling on the head of a man whom he believed was Shore. Heard it explained by Shore that the wound was caused by a blow from a policeman's staff. Was of opinion that the wound was more likely to be caused by a policeman's staff.

JOHN DICKEN, police constable. On the night of the 10th and 11th of September was on duty in Oldham street. His attention was called to four men. Gould was one of those four. They went into Swan street, and stopped and conversed in a whisper; they then parted. Two turned down Hope street; witness followed them to the shop of Henry Wilson, 50 Corporation buildings. The taller of the two knocked twice at Wilson's door, and remarked "All's right; open the door and let us in." Witness turned the lamp on, and whistled into the market for assistance. The taller man gave the name of John White, and the shorter one of Martin Williams. Those were the men afterwards spoken of as Kelly and Deasy. Took them before a magistrate on the 11th.

Mr. SEYMOUR. This is a matter that cannot be new to the prosecution; it must have been known to them, and it comes upon me a little by surprise.

Mr. Justice BLACKBURN. If it comes upon you by surprise, it can only be by the fact of which you are aware, namely, that Kelly and Deasy were in custody.

Mr. SEYMOUR. There is one fact more.

Mr. Justice BLACKBURN. Yes; you ought to have been informed that they were going to give evidence that Gould was in company with them.

Mr. SEYMOUR. It becomes singularly important from a fact of which I have just been informed, but I dare say your lordship will give me any reasonable assistance about the matter.

Mr. Justice BLACKBURN. Yes.

Cross-examined by Mr. SEYMOUR: All four of them walked one after the other close by me, and I had a good look at them. Wilson's house was about twenty yards off. Told Mr. Gee, the superintendent of police, the facts to which he had now deposed the morning after the attack. Had been ordered to attend the police court and give evidence, but was called off by some other duty and did not do so. Arrested the men under the vagrant act for loitering in the streets.

Re-examined by the ATTORNEY GENERAL: When arrested, the men had each six-barreled revolvers, loaded and capped, and likewise papers. Gave evidence on the day that the prisoners were first remanded, but not on the second occasion.

Constable JOSEPH HURST deposed that on the 18th of September he was called out of bed by other police constables in reference to the attack on the van. It was then about five o'clock. Followed them to Osborne street. Met two men coming down the Oldham road. Their shoes were daubed all over with clay. One had a white apron on, and both wore billycocks. They looked hard at witness, who was in plain clothes. Missed them after some time, but came up again with them in Murray street. They were then running. Witness caught them both near the Angel public house, but the biggest of the two slipped away from him. The other refused to give his name; he also struggled and got away. Witness still followed him into Richmond street, from which there is no exit. The man (the prisoner Shore) turned back, and witness thereupon took out his staff and struck him on the head. Still followed him, and with the assistance of other constables arrested and handcuffed him. On searching him at 7s 5½d, and one percussion cap was found in his pockets. Shore's head was still bleeding when arrested.

Cross-examined by Mr. SEYMOUR: Had been called at the police office as a witness for the defence. The examination had then been going on for some days there. Did not give any of the evidence then that he had done to-day. Was not asked any questions. When Shaw was taken to the station he had mud upon his boots. Mentioned the additional facts which he could prove to a clerk in the employment of the prosecution last week.

Sergeant BREARS. Took Kelly and Deasy into custody. They gave the names of White and Williams. On the 18th of September he was in the Oldham road, which is about two and a half miles from the jail, when he heard somebody being chased, who was eventually captured and turned out to be Shore. That was half-past five or twenty minutes to six.

Cross-examined: Did not notice Shore's boots. Arrested Kelly and Deasy on suspicion of felony. Found two revolvers in their possession. Heard the Irish officer say that a warrant had been issued for their apprehension.

Inspector GARDNER deposed that he was at the police court on the 11th of September when Kelly and Deasy were brought up, and again on the 18th. Inspector Williamson, of the London force, attended and applied for a remand. Saw the prisoners, Kelly and Deasy among them, put into the police van that afternoon under care of Sergeant Brett.

Cross-examined: Wrote in the warrant "for felony" on both occasions. Williamson was sworn. Don't know whether his evidence was taken down. The second warrant was destroyed. Got it back on the 19th from the detective office; believed from Superintendent Maybury, but would not positively swear. Destroyed the warrant because the prisoners had escaped, and knew that there would have to be a fresh warrant made out if they were reapprehended. That was his only reason. The governor of the jail had never received the warrant, and had not the prisoners in custody. Had never destroyed a warrant before; there never was such an occasion before. Tore the warrant up to shreds. Supposed those shreds were swept out in the usual way.

Re-examined by the ATTORNEY GENERAL: Thought the warrant of no importance.

FREDERICK WILLIAMSON, chief inspector of detective police at Scotland yard, deposed that he came down on the 18th of September with a warrant, and saw the two men, Kelly and Deasy, under arrest as White and Williams. Got his warrant backed by a magistrate of Manchester, and at the police court made an application. Was sworn. Did not produce the warrant, but merely stated that there was a warrant. The magistrate remanded the prisoners on his application. His own warrant was for Kelly. A head constable of the Irish constabulary held a warrant for the arrest of Deasy. That was mentioned, but the Irish constable was not sworn.

The warrant was put in, and bore date the 31st of August, 1867, and authorized the arrest of Thomas Kelly as being an active member of the treasonable conspiracy called the Fenian

Brotherhood, engaging in levying war upon the Queen, and endeavoring to overturn the Queen's government in Ireland.

Cross-examined: The Irish constable was not now present, but his warrant was in court.

THOMAS WELBY, of the Irish constabulary, produced the warrant for the arrest of Deasy, and stated that he was at the police office when Williamson was examined. His warrant was backed by a magistrate at Manchester on the 18th, but after the remand.

Inspector WILLIAMSON was recalled, and stated that his warrant was also backed, but after the remand.

THOMAS NEWTON, gunsmith, deposed that he had made an examination of the prison van, and found three marks of bullets on the left side of the van. The first mark was about fifteen inches from the driver's seat. That went clean into the first cell on that side and struck against the door. Another bullet struck a panel just under the royal arms, but did not go through. The third bullet just indented the side of the van. Another bullet cut the roof in a slanting direction downwards. Portion of the ventilator of the door was broken away.

Cross-examined: Saw no mark of a bullet either on the inside or the outside of the door. Did say before the magistrates that there was a bullet mark on the door, but found, on further examination, that it was the head of a screw-nail. If it had been a bullet mark, the shot must have been fired either inside the van or after the door was thrown open.

Captain LANE, governor of the city jail, deposed that on the 11th Kelly and Deasy were committed to his custody, and returned on the 18th under a report always made of remanded prisoners. A further warrant was sent on the 18th, but as no prisoners accompanied it the warrant was given up to Inspector Maybury. Did not see the document himself. On the 18th he actually received twenty-one prisoners with the warrants for their safe keeping.

Cross-examined by Sergeant O'BRIEN: The warrants on the 18th were delivered at the office by one of the police constables. They were found in the satchel of Sergeant Brett. Witness happened to be unwell that day, but they were delivered at the prison in the usual course.

Inspector GARDNER was recalled, and identified the warrants produced by Captain Lane as the same made out at the police office on the 18th of September for the committal of prisoners.

Mr. STEPHEN AUSTIN, clerk of the peace for Manchester, was examined for the purpose of showing that among the occupants of the van was one Frances Armstrong, a convicted felon.

Mr. MAYBURY, superintendent of police, said the returned warrant passed through to his office, but not personally through his hands.

FRANCES ARMSTRONG deposed that she was in the van on the 18th of September.

Cross-examined: Gave a statement of the facts as she remembered them at the police office. Had since attended as a witness for the Crown. Saw Brett shot. Would not speak to the man who did it. Remembered a demand being made for keys. Was taken about a week afterwards to see several prisoners. Identified two men, but did not identify Allen. There was one face came to the ventilator that day with a black moustache; he also demanded the keys. One man had dark clothes and dark billycock. He was not the man with the moustache. (Former deposition read, in which the witness said: "The man who came to the ventilator and asked for the keys, saying that he would blow all our brains out if they were not given, had very high cheek-bones, was small about the lower part of the face, had a small moustache, and light-colored coat and a billycock hat.")

Re-examined by the ATTORNEY GENERAL: Could only see down to the neck and shoulders of the man through the ventilator. Asked for her belief; she thought Allen was the man.

The Crown did not call any additional witnesses, but tendered several for cross-examination by the prisoners' counsel.

WILLIAM HEALY, gas inspector, deposed that he was on the road when the affray occurred, and was taken afterwards to the cells of the police court to see whom he could identify. The prisoners now at the bar were not among them. Saw perhaps twenty or thirty in all. Was there on various occasions—perhaps six times in all. Was never confronted with the men at the bar. Sometimes he was at Albert street when the examinations were going on at Bridge street.

The case for the prosecution having closed,

Mr. Digby Seymour said that before entering upon the case for his clients, there were some legal points pressing very strongly upon his mind which he desired to submit for the consideration of the court. His first submission was, that the legality or illegality of the imprisonment of the men Kelly and Deasy in the van from which they were rescued formed an important element in the case of the Crown, shaped as it was in the form of a capital charge. If their detention in the van was unlawful, either from any excess of jurisdiction on the part of the magistrate who committed them, or any irregularity such as the absence of a proper warrant directed to the officer who had charge of their bodies—although in civil action for false imprisonment the officer in charge might have a sufficient answer, yet in a criminal inquiry, the complexion of the offence charged against the men taking part in and procuring a rescue must be altered. Assuming for a moment that any such irregularity existed, what degree of force would Kelly or Deasy themselves have been justified in using to vindicate their liberty? The law gave a very liberal discretion on that head. A man was

held excused in doing his utmost, even at the risk of life itself, to procure his escape from illegal apprehension. From the only authority which he had enjoyed an opportunity of consulting, he took the law to be that what a person illegally imprisoned might do, for the purpose of breaking his prison or obtaining his liberty from illegal detention, his friends or third parties might do on his behalf.

Mr. Justice BLACKBURN. What are your authorities for that proposition ?

Mr. Seymour said that by the valuable assistance of his friend, (Mr. Cottingham,) whose aid he felt bound publicly to acknowledge, as well as that of his friend beside him, (Mr. E. Jones,) his attention had been drawn to some authorities on the point. In *Haackins's Pleas of the Crown*, cap. 21, page 201, under the chapter of rescue—"Wherever the imprisonment is so far groundless or irregular, or for such a cause, or the breaking of it is occasioned by such a necessity, &c., that the party himself breaking the prison is either by the common law or by the statute *de frangentibus prisona* saved from the penalty of capital offence, the stranger who rescues him is likewise excused."

Mr. Justice BLACKBURN. The question then is whether a person rescuing another from prison shall be brought under penalty for the prison breach; but what you have to make out is whether a person, not himself in custody, instead of appealing to the law, is entitled to kill the person who has the prisoner in custody. That is a position which I am very much inclined to doubt, and certainly the authority does not go to that extent.

Mr. SEYMOUR. "Entitled to kill," my lord; that is certainly putting it in a very strong way.

Mr. Justice BLACKBURN. Well, that is the point; there is evidence here that the prisoners did kill.

Mr. SEYMOUR. Well, there is evidence of killing, whomever that may effect; but the question is whether it may not be reduced to manslaughter.

Mr. Justice BLACKBURN. That is just the distinction which I wish you to draw. A person irregularly committed is under provocation, which may be said to excuse malice, but a stranger, who can apply for redress to the *habeas corpus*, is under no such provocation as would diminish the killing from murder to manslaughter.

Mr. Seymour said the only authority he had been able to find recognized the principle that if a person was himself justified in breaking his prison, third parties were clothed with the same excuse, and that he thought would go to the extent of reducing at least the character of the offence, where death had occurred by misadventure, from murder to manslaughter. His next was as to the regularity or otherwise of the arrest itself. When the men then called White and Williams were brought up on the 11th, it was under the local police act as vagrants, and upon suspicion. The warrant was filled up, not by the magistrate, but by a policeman, and not even for "suspicion of felony," but "for felony." There had been no taking for felony, there was no charge or evidence of felony, and therefore the warrant was clearly informal and inaccurate.

Mr. Justice Blackburn asked whether the counsel meant that the constable acting under that warrant was not to be protected.

Mr. Seymour apprehended that the constable was the mere accidental medium of conveying men to prison, and could have no better title to his captives than the magistrate who committed them. The warrant of the 11th being unsupported by evidence, on the 15th there was another remand, when a fresh warrant was made out also "for felony" and equally unsupported by evidence.

Mr. Justice Mellor said the second remand was applied for and granted in consequence of the statement that warrants were in existence for the arrest of Kelly and Deasy. No doubt, the warrants were at the moment unsigned, and were not produced; but the irregularity was one that occurred in practice every day.

Mr. Seymour said that irregularities constantly occurred, and could only be cured by signal examples of their mischief. The warrants strictly were insufficient, because they were not backed till after the remand was procured. But assuming even that the warrants were in existence, was it any justification of a remand by an English magistrate "for felony" that warrants existed charging men with being members of a treasonable conspiracy in Ireland? In support of his argument, Mr. Seymour referred to a recent case reported in the *Crown Cases Reserved*, where a warrant having been by mistake delivered to a member of the county police instead of the officer to whom its execution ought properly to have been intrusted, the conviction for cutting and wounding was quashed. This was a question of constructive murder or nothing, for there was no pretence for supposing that anybody entertained any enmity towards Brett. The whole question therefore turned upon the original illegality of the warrant.

Sergeant O'Brien submitted that when the men were brought up on remand on the 15th the charge on which they were remanded on the 11th was spent, and the only authority with which Brett and the other constables were clothed, and their only authority for detaining the two men in custody, was the renewed warrant issued that day. But meanwhile evidence of a totally different character was forthcoming, and the magistrate before remanding upon this was bound to have before him the actual warrant, of the existence of which he had been verbally informed. The original warrant was spent, no further evidence had been given to

justify its renewal, and no steps whatever were taken to issue a legal warrant upon the only charge as to which it appeared that evidence might be forthcoming.

Mr. Cottingham, in a lengthened and ingenious argument, supported the view which had already been put forward, and referred to the case of the Queen *vs.* Phelps and others, where one who was called to the aid of a constable engaged in securing a man charged with felony was killed by the prisoner's friends, and it was held to be only manslaughter, inasmuch as the constable was acting in excess of his lawful authority. Cases might be readily suggested in which the interference of bystanders to terminate an unlawful imprisonment would be natural and spontaneous. If, for instance, a man were being improperly carried to a lunatic asylum, bound hand and foot, and unable to do more, perhaps, than glance with his eye, could any one pretend that his friends would not be justified in doing what he was physically unable to do, namely, to release him? An officer was bound to be in such a position that he should not be a wrong-doer, for it had passed into a legal proverb that the officer's staff did not make a constable. The fact that a man was in custody of a police officer or even inside a police van did not make him legally in custody unless the officer were clothed with statutable authority. Men were only constructively guilty when they came together to perform a certain act; but if one of their number was guilty of something beyond the purpose for which they had met, the excess, he would submit, was only punishable in the case of the individual guilty, and not to be visited upon the parties confederated.

The Attorney General said the question was raised whether the assumed irregularity at the police court reduced the offence of all who were alike unconnected with Kelly and Deasy, and who had shot Brett while he was in the execution of his duty, from the crime of murder to that of manslaughter. As far as he understood the law, there was no pretence for saying, even if there had been an illegal warrant or illegal proceedings before the magistrates, that those who were neither Kelly nor Deasy, and were for this purpose persons wholly unconnected with them, should band themselves for the purpose of rescuing them, and that if they killed a policeman in so doing the crime should be reduced to manslaughter on account of the original illegality. No doubt there were cases where, if a person were in illegal custody, he himself might be excused for effecting his escape by violence or however he might. But that was on the ground that, being illegally in custody, he had a provocation which in the eye of the law might reduce the crime, which was *prima facie* murder, to that of manslaughter. And even in those cases where a man who attempted to effect his release made the alleged irregularity of his arrest a pretence and cloak for the violence he exercised he was not excused. In the present case, for the purposes of argument, it might be assumed that Kelly and Deasy, if they had been able to effect their own escape, might possibly have been allowed to say they were not legally in custody, and therefore there was such provocation or circumstances of extenuation as might have reduced the crime from murder to manslaughter. But he could not conceive it possible that where a policeman was conveying a man in custody in a prison van, supposing even there was no warrant at all, a number of persons who were mere volunteers could come forward and kill that policeman to effect the release of the prisoner, and then lay aside the imputation of murder if it turned out *ex post facto*, or accidentally, that the prisoner was not legally in custody, owing to some illegality in the warrant, or some want of technicality which ought to have been observed. The provocation recognized by the law was solely in the case of a person who committed the violence having himself been illegally in custody, acting under the sense of insult, as from a blow or some other offence.

Mr. Justice Blackburn said the case that would go furthest in enforcing the supposition which had to be tested was Tooley's case—that strangers interfering might be only guilty of manslaughter.

Mr. Sergeant O'Brien referred his lordship to Bray's case, reported in the second volume of Russell on Crimes, page 815. The judges in that case were divided on the point how far strangers might interfere.

Mr. Justice Blackburn said that case was the same that he called Tooley's.

The Attorney General contended that the case had been overruled.

Mr. Justice Blackburn said it had been exceedingly questioned.

Mr. Pickering argued that it was perfectly immaterial whether the prisoners who were rescued were remanded on the charge or on suspicion: that would not affect the legality of their custody by Brett, who had his warrant from the magistrates, on which he was bound to act. The learned counsel also referred to the case of an officer killed when serving a writ of execution, although the judgment might have been erroneous or the proceedings irregular, which was declared to be murder.

Mr. Justice Blackburn said the principle would apply if a justice of the peace had a jurisdiction which was not limited.

Mr. Hannen contended that the argument on the other side was neutralized by the evidence that in the present case the accused were not acting under sudden provocation, but in deliberately preconcerted determination.

Mr. Sergeant O'Brien said he took issue with the attorney general when his learned friend held that it was on the ground of provocation that, in the case of a man killing another when he was in illegal custody, the crime was reduced to murder; it was upon the ground of justification, and that a man whose liberty was illegally infringed had a right to take away human life, and it was no offence that he should rescue himself from custody. Take the test

of a case under an extradition treaty. Say that a warrant was issued in France or America, and that the formalities of that warrant were not complied with, and that a man was unjustly taken away to a seaport, or anywhere else, he might rescue himself from the illegal custody, and thereby be guilty of no offence. The question was, then, whether seeing and believing him to be so illegally detained was a provocation to others that might arise upon that.

The period for the mid-day adjournment of the court having arrived, Mr. Justice Blackburn said he would consider the point with his brother Mellor, and announce the decision of the court on his return.

At half-past 2 o'clock Mr. Justice Blackburn said the court had considered the objections which had been raised, and that it would be a question for the jury to determine whether the prisoners had a common design to rescue Kelly and Deasy from the constables who had possession of the van, and for the purpose of that common design to use dangerous violence to those having the custody of Kelly and Deasy. If the jury were satisfied that any one or all of them had a common design of using dangerous violence for the purpose of getting these men out of the van, and if in the furtherance of that design, and in consequence of that dangerous violence, Brett met his death, the court were of opinion that the crime would be murder. Supposing even that the custody in which they were placed was illegal and irregular: that the men were held upon warrants so informal that they would have been perfectly entitled before a judge to their discharge, and that there was no legal justification for detaining them in custody; the court was still of opinion that such circumstances would form no excuse whatever if deliberately and with design third parties engaged in an attack on the police and used dangerous violence such as had occasioned the death of Brett. He expressed no opinion as to what might be the effect of the provocation of illegal custody upon a man himself in reducing such a crime from murder to manslaughter. But the court were of opinion that in this case, although the warrant was to a great extent irregular and informal, still the custody was sufficiently legal. The question would be left, as he had already stated, to the jury to decide. The court did not feel at present called upon to reserve any point, but on their return to town they would consult others in whose opinions they justly placed confidence, and if they felt that further facilities ought to be granted for considering the point, they would take care that these facilities were afforded.

Mr. Seymour hoped that if he could strengthen the authorities, which he had been obliged very hastily and imperfectly to submit to the court, he might not be precluded by anything which had happened from submitting them to his lordship.

Mr. Justice BLACKBURN. You will not only be at liberty, Mr. Seymour, but I shall feel very much obliged to you for doing so. Not merely to the counsel who are engaged in the case, but to any learned gentleman who can refer me to any authority upon the point, which has not already been mentioned to the court, I shall feel indebted for the information.

By consent, it was arranged that evidence in the nature of an *alibi* should be given for the different prisoners, except Allen, for whom no witnesses are to be called, before counsel for the defence were heard on their behalf.

MARY FLANAGAN, respectably dressed, deposed, that on the 18th of September she was taking a walk in the Hyde road about 10 minutes to 4 o'clock. Did not know the prisoner Gould before that day. Saw him at a public-house door nearly opposite the city jail. The public house was at the entrance of the city jail; could see the railway arch from it; did not know the distance. Saw a cab driven up to the jail gates with a policeman in it. Gould was then there talking to some men. He remained there about ten minutes, and during that time witness did not lose sight of him.

Cross-examined by the ATTORNEY GENERAL: Am a governess. I have given the name of the family before. Perhaps the gentleman would not like his name to be mentioned.

The Attorney General pressed for the name of the family.

Mr. Seymour said there were persons who, in a capital charge of this kind, might not like their names mentioned or mixed up.

The court decided that the name should be given.

Cross-examination continued: I am a governess in the family of Mr. Le Compte, of 64 Oxford street, Manchester. He is a merchant. I have been some time in his family. I have not been in France with his family since. I wished to stay away from his family till this affair was over. I am now staying with Mrs. Wilson. She is the wife of the Mr. Wilson I came to speak for. He is one of those charged with the attack upon the van. Mr. Wilson is the clothes dealer in Corporation buildings. I did not know that Kelly and Deasy lodged at Wilson's, or were there from time to time. Was not aware that they went in and out. I had only been twice to Mr. Wilson's before this occurrence. Had been only two or three months introduced to him before this occurrence. That was by a Mr. Jones. I do not know who Mr. Jones is. He made my acquaintance by calling at my house, Foundry Inn, Widner dock, near Liverpool. I had been there from Christmas last. Left that inn and became governess. The inn is my own house—my mother keeps it. I think that inn is about twelve miles from Manchester. I came by railway. Have not been living with Mr. Wilson ever since the 18th of September. Went there about a week or fortnight after that date. Went to Mr. Wilson's house immediately after being examined at Bridge street. I think Mr. Jones was a commercial traveller. I first knew him by his coming to the inn. It was when I went to Mr. Wilson's house to buy some things that he first introduced me. I do not know where Mr. Jones now is. I

think he is gone to America; I believe he is. I cannot say to whom he was commercial traveller. I have been to the Hyde road several times. It is not a very favorite walk of mine. Nobody walked with me on that occasion; I was alone; I went beyond the prison, and then went home. I returned through Victoria park to Mr. Le Compte's, at Thorncliff Terrace, Oxford street. You can see the jail from the house. I don't know the distance exactly. Had been into town that day before, but had not walked down the Hyde road. Had never seen Gould before in my life. I had not any business out that day. It would take me about half an hour to walk from where I lived to the jail; rather more going back. I walked to the jail and stopped at the door of the public house. Did so because I saw Mr. Wilson there. That was the same place where I saw Gould; I believe Gould was speaking to Mr. Wilson; I was not introduced to him. [Evidence formerly given read to her—"I think I saw you (Gould) there at the same time as I saw Wilson, and about the same place."] I made up my mind that it was he as soon as I saw him at Albert street station. Cannot say whether Gould remained there as long as I was there. I went up the road towards the jail. I think I saw him then about ten minutes, all together. I think he was playing with a child of Mr. Wilson's, but I did not take particular notice. I have come from Mr. Wilson's now, and am going back there again. I cannot tell how far below the toll-gate is the public house I speak of; it is not very far.

Re-examined by Mr. SEYMOUR: My answers at the police office were given in reply to questions put by Gould. I was cross-examined on that occasion by Mr. Higgin, and gave names, dates, and particulars, as far as I could. I have no relations, social or otherwise, with Gould which would influence my testimony. I never saw him before that day. Mr. Le Compton is a merchant who came from Brazil: he is a married man and has daughters. My qualifications were tested before I was appointed. I can speak and teach French—not Italian. I have also testimonials to character from my former situation.

Mr. SEYMOUR. Character, madam! I hope you don't require a testimonial to character. I am sure you don't.

MARY O'LEARY, wife of Timothy O'Leary, examined by Mr. SEYMOUR. Recollected the outrage on the van. On that day she left Wilson's house, in Shudellill market, about 3 o'clock. Mrs. Clarke accompanied her part of the way down Oldham street. Wilson, his wife and child, and witness, then got into an omnibus to go to Bellevue gardens. A cart ran against the omnibus on the way, and broke one of the wheels. They wanted to get out, but could not, because the guard was on the box with the driver. Thought both the men were drunk. The omnibus stopped, and witness and her companions got out opposite the city jail. The name on the omnibus was "Johnson." Saw Gould that afternoon opposite the Justice Birch inn, nearly opposite the jail. It would be a few minutes to 4 o'clock, but witness did not see a clock. Saw Miss Flannagan there. Gould seemed to be passing, and he stopped and spoke. Gould spoke to the child. At that time a cab came past with a policeman in it, who was beating at the door with his hand, as though to open it. Witness and her friends were in the house drinking, and had been there about ten minutes when the cab came up.

By the ATTORNEY GENERAL: Was sister-in-law to Wilson, the clothes dealer in Corporation buildings. Went to Bellevue because Wilson had been drinking some time, and he said he would go into the country with his friends to take off the effect. A little boy of his died who was buried the day before. They got drinking again as soon as they left the omnibus. Witness could not help his drinking. Did not know that her husband knew of a man named White being remanded to the jail that day. Only knew that White was a customer of Wilson's. Had seen Gould before when he called to see a lodger at witness's house. Had not often seen Miss Flannagan. She was once or twice at Wilson's, and once at witness's house, when Mrs. Wilson brought her. Knew nothing of her, except that she was a governess. Saw Miss Flannagan in Hyde road on the 18th. She was going towards Manchester apparently, and came past the Justice Birch just when the cab came up. She stopped and spoke to Wilson and his wife and child. Had known Gould a month or six weeks before; a young man was with him. He was five or ten minutes with witness and her friends before he left them, and he walked on towards Manchester. The attack on the van had been taking place meanwhile, and it was then over. Saw Gould next in Albert street. Miss Flannagan was now living with witness's sister, Mrs. Wilson. White had left home on the morning of the 10th, and next morning he was arrested. Witness had seen Miss Flannagan nearly every day since the attack.

Re-examined: After giving evidence before the magistrates, the inconvenience of the police visits was so great that witness had to sell up and remove from where she lived before. Had been examined and cross-examined before the magistrates on all the particulars on which she had been examined to-day. Believed Miss Flannagan did not know Gould the day they met in Hyde road. Witness had been quite surprised to learn that White was said to have another name when he was arrested.

Mr. Superintendent GEE was at the Albert street station on the 18th of September. Recollected Gould coming there in custody. He had irons on both his hands and feet. Witness was present when persons were brought to identify Gould. Another man was chained to him. No other two were chained together. Saw Shore on the night of his arrest; did not see any appearance of mud on his clothes. Witness looked at him, as was his duty.

ISABELLA FEE, an elderly lady, was called on behalf of the prisoner Shore, and examined by Mr. ERNEST JONES. Witness kept a beer-house at 227 Rochdale road. Was not acquainted with Shore. On the 18th of September a young man came into witness's house at a quarter to 4. Believed it was the prisoner Shore. He called for a glass of beer. Her son called him Shore, as he came down stairs. Did not identify the prisoner before the magistrates. Was not then so near the prisoner as now. Could not swear to him now, but believed he was the man.

JOSEPH FEE, son of the last witness, remembered Shore entering the beer-house in Rochdale road, at a quarter or ten minutes to 4 in the afternoon of the 18th. Witness knew him for five or six months before, and called him by his name. He remained about half an hour. Believed Shore was dressed nearly as at present, in dark clothes, with an ordinary silk hat. Witness was a tailor and was repairing a pair of trousers for a neighbor that afternoon.

Cross-examined by the ATTORNEY GENERAL: Was asked by his eldest brother, an intimate friend of Shore's, whether he could give evidence. The beer-house in Rochdale road was about three miles off the railway arch in Hyde road.

FRANCIS KELLY, a tailor, 201 Rochdale road, remembered the day of the attack on the van. Went into Fee's beer-house that day about 4 o'clock. Was acquainted with Shore, and saw him there on going in. Shore remained about a quarter of an hour longer. Joseph Fee was there, and spoke to Shore. Shore had a dark suit on, and a silk hat.

Cross-examined: Had known Shore for four months. Had worked with the Fees at the same tailors' shop. Used their beer-house. Witness was not before the magistrates.

Re-examined by Mr. JONES: Witness first heard of Shore being implicated by reading of it in the paper. Was not asked to give evidence, but felt it to be his duty to do so.

Mr. Seymour intimated that all the witnesses had been called for Gould and Shore, except that in reference to the matter deposed to for the first time this morning by the policeman who arrested Kelly and Deasy, that he saw Gould with them, there might be another witness or two to call from Clopton street in Hulme, and their lordships' permission was asked to have these witnesses called subsequently, if desired. The learned counsel added that he had just received a communication from the prisoner Allen desiring to ask questions of two of the policemen, one at Albert street station, and another the superintendent at Fairfield street.

Mr. Justice Blackburn said that, although it might be irregular, the application could be granted without public inconvenience, if the witnesses were produced before the attorney general's reply.

Witnesses were being called on behalf of Maguire when our report left, shortly before 5 o'clock.

[From the London Times, November 2, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Friday.*

The witnesses called for Maguire before the court rose yesterday evening were:

ELIZABETH PERKINS, examined by Mr. Sergeant O'BRIEN, said she lived at Preston's Court, Salford; was a widow, and sister to the prisoner Maguire; he had been a marine twelve or thirteen years; he lived with witness, when on furlough, in Manchester; he had his uniform; he was apprehended on the 18th of September, at a neighbor's house, about twelve at night; the night before that Maguire slept in witness's house; on the 18th he did not get up until half-past three in the afternoon, because he was not well; he did not go out until near seven o'clock that evening.

Cross-examined by the ATTORNEY GENERAL: Maguire went to bed about eleven o'clock the night before; that was his usual habit; was a long sleeper; he was dressed the same as now.

By Mr. Sergeant O'BRIEN: Her house is quite two miles from Hyde road.

MARY INGHAM, a single woman, living next door to the last witness, had known Thomas Maguire since he came home on furlough, nearly six weeks ago. On the 18th of September saw Maguire, who spoke to her through his bedroom window, and asked if he could come with her to a party; that was at half-past three, exactly; the party was at Mr. Copeland's, her employer. He was in his shirt sleeves; he had no braces on.

The furlough of Maguire was produced; but—

Mr. Justice Blackburn said it was not of the slightest importance.

Cross-examined by the ATTORNEY GENERAL: Witness lived with her mother. Knew it was half-past three, because she had looked at the clock, having to be at the party by four. Went to the party alone.

Re-examined: I am sure it was Maguire who spoke to me. I got back from the party between six and seven at night.

MARTHA HANCOCK, a widow, living in Greengate, Salford. Her back door adjoins Mrs. Perkins's; Maguire came into her house in his uniform more than once to inquire for his

sister; saw Maguire on the 18th of September, washing himself; that was about half-past four; witness had lived there thirteen years.

Cross-examined by the ATTORNEY GENERAL: I looked at the clock both when I went out and came back. I could not go out without seeing the clock. You can come and see it any time. [Laughter.]

The ATTORNEY GENERAL. I must decline.

WITNESS. Maguire often came into my house, but he did not come in that day.

LOUISA CARROL said her husband was a clogger. Her mother (the last witness) lived next to Mrs. Perkins. On the 18th of September saw Maguire come down stairs in his sister's house between three and four o'clock. Witness was in the back yard at the time.

By Mr. Justice MELLOR: I knew it was the 18th of September by the bother.

ELIZABETH BLACKBURN, a widow, lived opposite to Mrs. Perkins. Saw Maguire on the evening of the 18th of September filling his pipe, and spoke to him between four and five o'clock.

Cross-examined by the ATTORNEY GENERAL: Did not speak to Maguire after four or five o'clock. Witness was washing in the house, when he said, "It is a fine evening," and witness said, "It is, Thomas."

ELIZABETH INGHAM, a widow, lived next door to Mrs. Perkins. Had known Maguire since his furlough. Saw him on the 18th of September, about four o'clock, crossing the yard. Saw him up to six at night.

Cross-examined by the ATTORNEY GENERAL: They could see into each other's houses. Witness saw Maguire every day almost.

JAMES GRANT lived at 3, Preston Court, next door to Thomas Maguire. Was a laborer, and worked for Neill & Sons. Saw Thomas Maguire, on the 18th, at his sister's house, at half-past five.

Cross-examined by the ATTORNEY GENERAL: I was going by with some tools when I saw him. He was smoking.

CHARLES B. BEAN deposed: I am a police constable for Salford. I know Maguire by sight, and had known him for three weeks before the 18th of September. Maguire was given into my custody. I have known him as a quiet man, but he used to drink a deal about home at night. On the 18th of September I saw him about five minutes to eleven, at night. I have seen him a dozen times, and nearly always at his sister's house.

WILLIAM MOORE, another witness to character, was called, but did not answer.

Inspector ROBERT POOLE, of Fairfield-street station, called and examined by Mr. SEYMOUR, on behalf of Allen: I was on duty at the station on the 18th; I remember Allen being brought in; his head was bleeding, and there was blood upon his face; in that condition he was seen by several persons, perhaps a dozen; he had no coat on; he was sent to Albert street the same evening; the doctor dressed his head: there is a bandage now on his head; his coat, vest, and hat were retained in the charge office, and we have them still.

Mr. Seymour stated that Constable Moore, whom Allen wished to call, was not in attendance; and Mrs. Powell, Gould's landlady, lived at too great a distance to be called that day.

Mr. Justice Blackburn said it would not be reasonable to call upon Mr. Seymour for his address that evening.

Mr. Seymour hoped not, because of the mass of evidence he would have to examine.

The court was then adjourned.

At nine o'clock this morning the judges again took their seat upon the bench.

At the request of the prisoner Allen, Mr. EDWARD PEACOCK RIDGWAY, one of the witnesses summoned, but not examined on behalf of the Crown, was sworn, and deposed that, on the 18th of September, he was in the Hyde road and saw a man active and firing at the back of the van. Before the magistrates, he had named another man, not now in the dock, as reminding him very much of that man. That, however, was the way in which the question was put to him.

Cross-examined by the ATTORNEY GENERAL: The man who fired had his back to witness the whole time; he had on a whitish coat, and appeared to have no beard.

Mr. Digby Seymour then proceeded to address the jury on behalf of Allen, Gould, and Shore. In the difficult, delicate, and anxious task of sifting and examining the evidence as applicable to three different men, and necessarily presenting three different forms of argument to the jury, he could not expect much sympathy, perhaps, from his hearers, but he knew he should have the sympathy of his professional brethren. The present case, he confessed, was one from which he would gladly have been dissociated. But when the fact was communicated to him that men charged with an offence endangering their lives had sought his professional services and had tendered the proper professional retainer, it was his duty, at whatever sacrifice of time, and even at a season when absence from town was attended with the greatest professional inconvenience, to devote himself, heart and soul, to the interests of those who had intrusted their lives and reputations to him. It was with great satisfaction that he had listened to the calm and impartial tone of the attorney general in laying this case before the jury. His observations, marked by an absence of anything that could disturb the minds or inflame the passions of his hearers, were not alone worthy of the man, of the generous and manly character of the advocate, but of British justice itself, whose exponent and chief

minister spoke in his person. The caution which the attorney general had addressed to the jury Mr. Seymour enforced by his entreaties. As they would faithfully obey the dictates of their own consciences, as they would secure for themselves in the long hereafter the refreshing retrospect of having acted worthily on a great occasion and in a crisis of strong excitement, he called upon them to act in the spirit shown by the unfortunate and most deserving officer whose death formed the basis of their inquiry. Whatever fears, whatever panic, whatever violence might prevail externally, let it be their firm resolve, uninfluenced by those considerations, to "do their duty to the last." No doubt there was much in the circumstances of the original attack and of the trial itself to strike the imagination. That in the middle of the day, in peaceful Manchester, the home, and to a great extent the centre of commerce, an attack like that upon the prison van should be made was a fact sufficient to disturb the public mind; but he asked them, as far as possible, to shut out this exciting picture from their eyes, and to narrow their view as much as possible to the question of identity. Throughout all England a panic had spread. Even her Majesty's government had thought proper to send down to the spot a special commission, clothed with all the formality and all the terrors of the law. Did he intend to comment on that step? By no means. If the government had acted in haste, Parliament and the country would express their opinion upon the measures adopted. His duty was merely to deal with the sworn evidence as affecting the accused. He refused to make his address the vehicle of appealing to or gratifying morbid tastes of persons, whether inside or outside that court, by dwelling upon topics calculated only to arouse prejudice. But it was impossible for prejudice not to have been to some degree aroused in the minds of the jury by the unusual sight of justice protected inside and outside her halls; by the spectacle of prisoners guarded by infantry and cavalry. It was not usual in traversing the halls of the Manchester assize court to see in every second man a police constable in uniform, in traversing their beautiful corridors to hear the sound of rifles being grounded, or to find the court of justice itself filled with mechanism for the instant suppression of a conflagration which it was vaguely apprehended might break out to endanger their lives. Did he, therefore, blame the authorities, who considered it their duty to take what might even be excessive precautions for the secure administration of public justice? By no means. It was only because those precautions were calculated to affect the minds of jurors, by exciting apprehensions of possible and unseen dangers, that he implored them to be additionally careful in their deliberations, and not to let their minds be startled by vague fears of terrible mischiefs arising to the general community. It was impossible to pass along the streets without perceiving that an imperial and political significance was given to a trial which in itself was narrowed to the limited issue of murder. Now, on the political branch of the question, he had a word to say. I speak (continued the learned counsel) as the countryman of some, if not all, of the prisoners in the dock. But do not let any one in court suppose—do not even let any of those men themselves suppose that on that account I sympathize with their politics. Of all the curses that ever fell on my unhappy country Fenianism is the blackest and the worst. Famine may desolate and destroy, pestilence may mow down its hundreds or its thousands; returning spring will renew the crops of the earth, and a refreshing atmosphere will subdue the pestilence. But Fenianism is a blighting curse, a cancer fastening itself on the fairest spots of an otherwise fair island, and looking for its mischief and exerting its influence upon the most vital parts of my native country. Ireland may have wrongs; she may need intelligent reform. Religious differences, social cares and truths, and the political divisions of society undoubtedly disturb the face and injure the prospects of the country. But will Fenianism ever cure these things? Will it give shipping to her deserted quays, bring capital into the country, or revive her industries? Will Fenianism ever enable Ireland worthily to uphold her proper dignity as a helpmate to this country, worthy of the race and enterprise which naturally belong to her? I speak with the feelings of a man who is anxious that his motives and spirit should not be misunderstood. Anxious to do my duty by these men, and wishing to the utmost of my power to succeed as their advocate, no amount of professional sympathy with their cause can enable me to forget, or will prevent me from taking any opportunity I think right of declaring, that the cause associated with this trial has no sympathy from me, and ought not to receive sanction or encouragement from any man who loves his country. But, while I say this, let me also say I am anxious you should try this case as if you had before you, not five supposed Fenians, but five of your own fellow-countrymen, without taint or suggestion of rebellious thought or revolutionary movement. Set aside all considerations of this kind; try the case with the determination that you will calmly, judicially, and prayerfully do your duty by them. Oh! remember this. If these be Fenians who are on their trial, British justice is on its trial also. The learned counsel then proceeded to review in detail the evidence given for the prosecution, and said that the first point for the jury to be satisfied upon was whether they had given to them a clear, connected, and consistent account of the attack upon the van, or whether, owing to the suddenness of the attack, or any other circumstances, the extent of the violence, the character of the weapons used, and the number of persons engaged in the affray had been greatly exaggerated. According to most of the witnesses, revolvers were only in the hands of the few against whom the acts of grosser violence were charged, the rest having been simply armed with stones; but one man, in his fright, actually saw a whole range of men drawn up with revolvers pointed at the van. The number of shots discharged varied, accord-

ing to the evidence of different witnesses, from three to one hundred. But if the graver version were also the more true, where were the results of all this violence? Brett was unhappily killed, Bromley was shot in the thigh, Sprosson in the foot, and a bullet lodged in another constable's clothes. That was the utmost extent to which the case for the Crown could be pushed. But the captures were made on the spot: there were hosts of pursuers only too eager to hunt down the prisoners: they were hunted, seized, and whilst begging for mercy were knocked down, struck on the head, cut, and actually bleeding when taken to the station. But if such multitudes of revolvers had been used in the attack, what became of them? They were not found in the possession of the prisoners, and there was no time to throw them away. And if they had been thrown away, none had been found and produced. The only single weapon out of all this array of deadly armament found and produced was the revolver taken from Allen. That was the solitary fact as to armament on which the case depended. But it was fortunate, in one sense, that this weapon was found. For the jury would recollect the graphic description which one of the witnesses gave of men "loading their revolvers as they ran." Where are the ramrods with which they did this? Why, the single weapon which was produced had no ramrod at all; it loaded through the breech. Then as to the amount of violence. After the escape of Kelly and Deasy had been accomplished, and it was an object to keep off the crowd sufficiently long to give them a start, what attempt had been made to use deadly weapons either for the gratification of violent passions, or to revenge upon persons in the crowd the throwing of stones which had been going forward? Was it not plain that the recollection of facts had been warped or affected in the case of very many of the witnesses by the fears or imagination of the witnesses? Without imputing to them intentional untruth it was easy to see how the readiness of boys or men to repeat a tale of excitement, and the reading from day to day of further particulars or surmises in the newspapers, might operate with them, till at last they got into the box ready to swear to what after all were in a great degree the mere growths or exaggerations of their own fancies. Having mentioned the newspapers it was only fair to say that he had nothing whatever to complain of in the course taken by the press of Manchester. Since the trial began he had not seen or heard of any attempt to criticise what was going on in court, or to influence in any way matters connected with the administration of justice. He thought, however, that the Crown had not produced all the witnesses that might fairly have been expected. They had not examined all the police present at the attack, but only a selection of them; they had examined the driver of an omnibus, but had not examined the driver of the van itself, the man whose horses were shot. These men were charged with using weapons, lethal weapons, as the Scotch law, sterner and stricter in this matter than the English, called them, with deadly intent. What was the proof of that deadly intent? If desirous of doing mischief, could they not have aimed with much more deadly deliberation? Allen fired at Sprosson, if certain witnesses were to be believed, but was it at his head? No: but at his foot. Again the policeman Shaw, whose tendency would naturally be to strengthen the case if he could, asked as to the shot fired into the van, said his impression was at the time and was still that Allen fired to break the lock. But there was direct evidence as to the question of intent to kill. The policeman Knox had a pistol pointed at him, and drawing himself up challenged the man to fire. But the shot was not fired; the assailant with a deadly weapon in his hand, not left to his original intention, but irritated and challenged to use it, actually allowed Knox to escape without injury. Did that look like deadly intent? Dealing then with the points in which different Crown witnesses had contradicted themselves, the learned counsel pointed out that there was an irreconcilable discrepancy between two men as to the direction in which the horses' heads were turned after they were shot. And the importance of this variance lay in the fact that as the horses' heads turned, so the back of the van was inclined, and it became possible or impossible for the witnesses, from the position in which they were standing, to see the occurrences to which they deposed at the back of the van. The expression which Allen was stated to have used to Kelly was differently represented by two witnesses, and one undertook positively to contradict the words to which the other swore. But the two witnesses who deposed to the most material facts were also the two whose own expressions exposed their evidence to gravest suspicion.

What reliance could be placed on the evidence of a man who seeing, as Superintendent Maybury showed that he must have seen, Gould and another man chained together in the police cell, undertook to say, first, that Gould was not chained, and then admitted that he did see a chain, but thought that "Gould was only playing with it." Was that witness playing with the truth, or was he not? The other instance was even graver. The only man who undertook to supply a missing link in the evidence, and to say that Allen stooped down "as if taking aim" before he fired, was the same man who acknowledged that he was familiar with every particular of the announcements as to the reward. According to his own account, there was not a line which he had not read, not a figure which he had not gloated over. He did not hesitate to say that if upon that man's testimony any one of the prisoners now in the dock were executed a judicial murder would have been committed. In the current history of the criminal procedure of this country the jury had a fearful example of the dangers of false swearing. It was a terrible and warning instance. A woman degraded her sex by coming forward and endeavoring, with a view to gold, to swear away a man's life. That, too, was upon a charge called a "Fenian" charge. Fenians or not, he was sure

these men would have in Manchester as fair a trial as if they were fellow-Englishmen. As to the melancholy shot itself, the women inside the van gave a connected account of what had happened. The pistol, even assuming it to have been pointed at Brett, did not follow the movements of Brett, but Brett was pulled down till his head came opposite to it. The women described it as a sudden pull, with all his force. If the jury took the view—and he earnestly prayed that they might be able to do so—put forward by one of the policemen, that Allen aimed at the lock, coupling that with a sudden, unforeseen act of the woman, how could they find Allen guilty of deliberate, wilful murder? Was it unreasonable to suppose that if he had not been pulled down in such a way Brett might not have met his death? There was little doubt that those who came together that day with arms knew that Kelly and Deasy were in the van, and that their object was to create such alarm or confusion as might cause their escape. But on the question of wilful murder there was one piece of evidence highly significant as showing the true character of Allen. When he was running away in hot haste with some chambers of his revolver undischarged, and was pursued with still greater heat, he turned round and fired—at his pursuer? No; but he fired off his revolver into a field, thereby depriving himself of a chance of escape if he had been really a man of desperate intent. Referring to the evidence for the defence, the learned counsel asked whether it had been shaken in any material point. The same evidence had been given before the magistrates, and it was only reasonable to suppose that if it could have been displaced, or the characters of the witnesses impugned in the interval, the Crown would have taken the measures necessary for that purpose. Believing the evidence for the defence, how was it possible for the jury to convict Gould? The *alibi* for Shore he admitted was not in all respects complete, but how immeasurably was it strengthened by the weakness of the case for the prosecution. At this stage the learned counsel mentioned that he had received a communication from a person who was anxious to give evidence with regard to the cross-examination of one of the witnesses.

Mr. Justice Blackburn said it was a very late stage at which to introduce any evidence entirely fresh, and requested that the letter might be shown to him, with a view of determining whether it involved any point really material. Having read the letter, the learned judge said, "In any case this matter would not be evidence, and I am quite sure that it is not of any importance in its bearing on the case."

Mr. Seymour said he had only done his duty in mentioning the matter, leaving it to the court to determine its importance or relevancy. In conclusion, he made a renewed and urgent appeal to the jury to consider the question intrusted to them carefully and impartially, so that out of this trial British justice might come without a stain. In the hearing of the prisoners themselves he declared that till that moment never had justice been more admirably, more fully, or more impartially administered. But, to maintain this strict and honorable impartiality, he besought the jury to banish from their minds the mission of troops within that building, the publication in newspapers and elsewhere of alarming rumors; above all, not to exaggerate to themselves the abominable evil of Fenianism. "Do not let it alarm you," said the learned counsel; "there is nothing in it. It is a mere fungus-growth—a cross between Irish discontent and Yankee rowdiness—and there is no comity with it in the hearts or feelings of the loyal Protestants or Catholics of Ireland. There is not a politician of any standing in my native land who has not denounced it, not a capitalist who is not afraid of it, not an altar throughout the country which has not cursed it. The clergy have spoken of it as in times of old the Levitical priesthood and the priesthood of the east spoke—"Go forth into the wilderness, thou leprosy. Unclean! unclean!" I speak this though I know that in doing so I am speaking words in direct antagonism to representations which are studiously made, and because I hope these words will reach and perhaps influence misguided dupes. Let us hope that this trial, apart from its immediate issue, may have a great moral effect. It cannot fail to do so if, after these men have been tried carefully, you give a discriminating verdict. Let us hope that the mild hand of peaceful legislation may succeed in removing the evils under which Ireland labors. And let us hope that the day is not far off when her Majesty will find another Balmoral on the romantic, verdant hills of Kerry; when she will not be afraid to trust her foot within her own Irish dwelling; and when, looking back to her visit there, may be applied to it the words of the Irish bard—

"On she went, and her queenly smile
Lighted her safely through the green isle."

Such is the picture which as an Irishman and a patriot I am anxious to draw. Sure I am that if it be realized the dupes of those impostors will vanish, and I trust by and by become shadows and things of the past. With a further appeal to the jury to vindicate anew the advantages and safeguards to society of the system of which for the time they were the representatives, the learned counsel brought to a close an address extending over three hours and a quarter.

MR. SERGEANT O'BRIEN rose to address the court on behalf of Larkin and Maguire. He said he undertook the defence originally under a deep sense of responsibility and a still deeper sense of discouragement, because he felt that sufficient time had not elapsed since the occurrences charged upon these men to allow of the public excitement to cool down, and permit a dispassionate consideration of the evidence against them. But now, after his experience of the manner in which this trial had been conducted, the careful attention bestowed upon i

by the jury, and the evident sense of responsibility with which they had regarded it, his discouragement had passed away, and he felt that, whatever might be the excitement or prejudice elsewhere, they would keep their minds entirely free from any other considerations than those of the impartial duty committed to them. He wished it had been possible to have excluded from the consideration of this trial every other element except the pure and simple questions whether these men had been guilty of murder or not, or whether they had been guilty of any offence that might be of a less serious character. Unfortunately, it was impossible to exclude all foreign considerations. He concurred in all that his learned friend (Mr. Seymour) had said of the manner in which the attorney general had introduced the case; he had imported into it nothing that it was possible to exclude. For himself, he must say there was no man in this court or out of it who more sincerely deplored or more strongly condemned any organization of the kind that was now exhibited on the part of some portion of the Irish population, an organization that he knew too well could only have the effect of postponing the period and counteracting the object of the healing measures of legislation which he trusted it was the wish and anxiety of every heart and mind in England to apply to an unhappy and suffering country. He had now to remind the jury of the difficulty, as well as the necessity, of discriminating in their minds the evidence against the several prisoners. They must endeavor not to allow evidence against one of the prisoners which might be stronger or weightier to influence the case they were considering against the others. If that was a difficulty in all cases, it was especially a difficulty in this one, because here not only were there several prisoners on trial, but they felt that they were of a class of people who were spoken to by a number of witnesses, with respect to whom the discrimination of identity was hindered by the well-known tendency, when persons of the same class and cast of countenance were seen together by strangers, to confuse the individual differences under the generic resemblance, especially in the excitement of a public disturbance, during which it was possible to have no more than a momentary glance at the features of the persons in question. After these general observations, he did not intend to go over all the ground that had been so fully occupied by his learned friend, but would briefly call attention to the nature of the offence with which Larkin and Maguire were charged, to the evidence as it applied to one of the two prisoners, and to the cases—for the cases were very different indeed—against the others. If he had to deal with the case of Maguire only, he should have very little misgiving as to what would be the result, because he could show from the evidence that he was not spoken to by any one witness who could be entirely relied upon, and that he was not identified as having taken any active or leading part in the outrages he was charged with. He was not identified by any remarkable feature or dress in any respect, and those who thought they saw him on the occasion were entire strangers to him. He was not known to be in any way connected with any movement of the kind in question; but when he returned home after thirteen years' service as a marine he went to live with his sister last August, and was traced in no way whatever to subsequent connection with the other persons who were identified or seen on this occasion; nor was he seen by any person in the pursuit. It was very different, therefore, to the case of Larkin. These two men were charged with the crime of murder. If he understood their lordships aright, they held that assuming, or assuming not, the legal custody in which those two men were of whom we knew so little, then if a number of persons combined and entered into a common design of rescuing those two men by means that were dangerous to human life, and the death of any man followed, that was murder. That definition he would cheerfully accept. The jury would see there must be community of design, not only to effect the desired end, but community of design as to the means employed. It was that which rendered the act of one the act of all. It was that which made a man guilty in this case of the crime of murder. Now, as regarded Larkin and Maguire, the crime of murder was imputed to them through the act of others. It was not alleged here that the fatal shot which took away the life of Brett was fired by Larkin; or that Maguire was ever seen in the possession of any revolver. If there was evidence that Larkin was present during some part of the time in which the attack was made, yet the jury must further be satisfied that his mind went with the act, because here they were dealing with a supposed confederacy of design, regarding which they had no evidence whatever except the manifestation of the overt acts committed. In most similar trials there was evidence that all the persons concerned had been seen together previously, and that they had been leagued in preparing the means with which the act imputed to them was committed. But here there was an entire absence of such evidence, with the exception of one or two witnesses who said that they had seen some men loitering in the neighborhood of the place where the attack was made. Therefore, beyond the acts proved on that occasion there was no evidence of design, or contract, or confederacy whatever. The jury must judge from the acts, and the manner of the acts, whether this confederacy or conspiracy had been entered into and been consented to by all who had a part in the outrage, the common object being to rescue those two men. He need not tell the jury that it was possible that men might have combined for the purpose of a rescue, not contemplating the degree of resistance which was actually offered, for as a matter of fact the ordinary guard which accompanied the police van was very much less than that which went with it on this occasion. The ordinary guard was one which it might have been calculated would yield to the mere demonstration of physical force, without any actual use of weapons being required in a manner dangerous to

life. That remark would apply to the case of Larkin. In the case of Maguire it was remarkable that not one of the policemen who had been called could speak to him in any way whatever, although those on the van would have had the best opportunity of seeing him, with the exception of Garwood, and he did not speak of him as having taken any important part. Considering the irritation naturally produced by the occurrence, and considering all the circumstances which would inspire them with sympathy for Brett and resentment against those who caused his death, nothing could have been more calm and straightforward and considerate than the manner in which the policemen called as witnesses had given their evidence. It was not to be disputed that many of the witnesses attributed an active part in the affray to Larkin. No doubt they contradicted each other, and gave different accounts, which shifted the part and shifted the scene, but many of them did say that he took an active part with the other prisoners. But the jury would not allow evidence against Larkin to affect their judgment of the case against Maguire. The witnesses to whose evidence the learned counsel then drew particular attention were the man Patterson, who saw the affray from where he was seated on a wall, the boy Mulholland, and Hughes. He called attention to the positions from which these witnesses observed what took place, and the consequent uncertainty there would be in their observation. Then there were the obvious discrepancies between what they stated before the magistrates and that which they stated now as affecting particular persons. The discrepancy was well accounted for by that intelligent boy who was so quick at repartee, but with no experience of life to check his confidence, when he said that "he had thought it over since then." It was in fact impossible for persons, however honest in intention, to resist the influence on the mind of prevailing prejudices and passions, or of what they heard from others respecting the events to which they themselves had been witness, and it was evident that in the interval they had "thought the matter over," the result being that they now spoke, not merely of what they had seen, but stated the combined result of their own observations, and what they had heard others had seen. The learned counsel entered into a careful examination of the discrepancies on particular points in the evidence of those witnesses. He then pointed out the difficulty and uncertainty of observation with which the omnibus proprietor and driver (Slack and Munn) would witness what took place from a distance of forty yards. With respect to Maguire, this was really the whole of the evidence. It was needless to say how an impression would afterwards be created in the minds of persons brought to identify the prisoners, when they found Maguire among them, although he had been apprehended not near the scene of the attack, but in a house near his own home. He was not identified in any way by his dress, except that Munn had placed a white hat on his head, which no one else appeared to have noticed. Supposing Larkin to have been shown to have taken some part in the transaction, the jury must then be satisfied that he was there with the determined purpose of effecting the rescue by dangerous violence. There might be some who had formed the deliberate purpose; there might be others who had formed a remoter purpose, and had no community of design other than that of rescuing the two prisoners in the van. The jury must remember the gravity of the imputation which they were asked to put upon the prisoners, the imputing to them the guilt of an act done by another man. It might be that in the irritation of the moment, something arising from the act of refusal of the keys, or some momentary circumstance of that kind, the fatal shot was fired. Larkin himself did not appear to have made any specific use at all of the pistol which one of the witnesses had placed in his hand. Assuming that what the witnesses had imputed to him was correct, then, without disputing that he was deserving of serious punishment for the part he took in the transaction, the question would still remain whether he had taken any part in it which was deserving of death. The case against Maguire would have been of no force if it had not happened that he was here said to be associated with persons to whom the taint of suspicion attached. No reason had been shown why the jury should not believe the testimony of the body of witnesses called in his favor, witnesses who knew him well, and who perfectly concurred in their statements, in preference to the evidence of the witnesses against him, who did not know him previously, and who differed in their description of what they believed themselves to have observed under circumstances not at all favorable to the accuracy of their observation. The learned counsel concluded by solemnly urging the jury to anticipate the future reflections of conscience if it should hereafter appear to their minds that in their present decision against any one of these men they had judged the case with rashness.

Mr. Sergeant O'Brien's address occupied an hour and a half.

The ATTORNEY GENERAL, in reply, said the case as it was originally placed before the jury had not been altered by the course of the defence. The question for the jury to determine now was, as it had been at the outset, whether a deliberate design had been formed to rescue Kelly and Deasy from the persons who had them in charge, and to use dangerous violence if necessary for the purpose of carrying out that design. To satisfy them on this head it was necessary to do little more than view the facts in order of date. On the 11th of September two men, afterwards known as Kelly and Deasy, were arrested, were remanded, and brought up again on the 18th. Until the prison van left the court-house on the 18th, it would have been difficult for anybody, except some one who had an interest in the matter, to know that Kelly and Deasy were in Manchester, much less in custody, for they were arrested under different names and only identified at the court-house that day. But two hours

before the van returned, men had been gathering in public houses near the arch where the van was afterwards stopped. They appeared to be perfectly idle, but their presence had been noticed by more than one person. Just before the van arrived, those men who had previously kept apart assembled under the arch or at the further side of it, and immediately afterwards pistols were noticed in the hands of the party, or some of them. But it was said, admitting that there was combination to a certain extent, what proof was there that violence of a deadly character was meditated? In twenty minutes after the van was attacked, one man had been killed, another shot in the leg, a third in the foot, a fourth had been followed and fired at three times as he was retreating for safety towards the prison. What further proof of violence was there? Both horses were shot, and another constable so nearly shot that the bullet whistled between his face and the side of the van. As soon as it was found that a policeman was inside, cries were raised of "Shoot him," and after Brett was shot threats were made of shooting the women unless they handed out the keys. Even after the keys were given out, and after Brett had fallen out of the interior, a shot was fired and took effect on Sprosson, being fired for the purpose of preventing persons from following Kelly and Deasy while these were making their escape. None of the conspirators, it was true, had come forward to tell when the scheme was concocted, but it was evident not only that there must have been organization, but that there must have been spies, male or female, to inform the conspirators of the approach of the van. Whether there were among the crowd twenty men or only a dozen was immaterial if only they met with a common design. It could not even be contended that the pistols were empty, or loaded only with powder, for the bullets had done their work. It was not necessary that the men should have gone to the spot with evil intent to particular persons, or designs to kill any particular individual as long as they went prepared and provided with means to kill or wound all who might resist them in their designs. His learned friend had thanked him for the fairness and impartiality towards the prisoners shown by the Crown in its conduct of the case. He thanked the learned counsel for making that statement so publicly, but he felt sure the youngest counsel present, if he had had the conduct of the prosecution, would have pursued exactly the same course. It would give him deep concern if he thought he had not afforded all the facilities in his power to the prisoners for the production of any evidence material for their interests, and he therefore regretted that one of the counsel for the prisoners, in his address, had complained of the non-examination of the driver of the omnibus. He wished the suggestion as to the driver of the omnibus had been made earlier, for all the witnesses, as his learned friend knew, were in waiting and ready to be produced. Before closing the case for the Crown he waited some time to see whether the production of any particular witness would be asked for. His fear really had been that for the convenience of the court and jury he had produced too much evidence. As to the tactics adopted during the attack, it was alleged that the shots had nearly all been fired at random. But there was great method in this random firing. Its first effect was to drive the police officers from the roof of the van which it was desired to break in, and, as if to hasten matters, one of their number was shot in the leg. It was said, too, that the evidence about shooting into the front ventilator must be mistaken, inasmuch as Kelly was in one of the front cells and Deasy in another. But not one of the men concerned in the attack knew the cells Kelly and Deasy were in, as was shown later by their making the inquiry. But the fact remained that one of the witnesses saw the shot fired, and there the bullet hole was at the present moment. Great stress had been laid upon the supposed intention of Allen not to shoot Brett, but merely to fire generally at the door, so as to break the lock. The jury, however, would remember that the corridor of the van was so narrow that it was almost impossible to fire into it anywhere without danger to life. It was quite right for counsel for the defence to lay hold of every little circumstance, but how did the non-production of more than one pistol, the one taken from Allen, prove that only one pistol had been used in the affray? Plenty of men concerned in the attack had got away, and he could only say that he hoped the pistols were not reserved for use on any future occasion. Having briefly but lucidly reviewed and linked together the circumstances of the actual attack, the attorney general proceeded to discuss the evidence put forward on behalf of the different prisoners. If the *alibi* attempted to be set up on behalf of Gould were true, what became of the evidence of ten or twelve witnesses who swore positively to his active participation in the affray from the first shooting of the horses to the final capture of Allen? The *alibi* was of a most extraordinary character, for, though it was denied that he was upon the spot while the van was being assailed and the prisoners liberated, it was not denied that he had run across the field and there been taken into custody. According, therefore, to Gould's own account, the same man who had been standing with Miss Harrison and playing with one of Mr. Wilson's children at a considerable distance from the railway arch found himself, a quarter of an hour later, without any previous notion of what had been going on, crossing a field linked arm-in-arm with Allen, who unquestionably had been engaged in the affray. This certainly was an extraordinary story, but it was the one vouched upon the faith of Miss Harrison's testimony. Comments had been made upon the supposed severity of the cross-examination of that lady, but her story, and her entire connection with the Wilsons, was of so extraordinary a character that justice required it to be thoroughly sifted. The attorney general next discussed the *alibi* sought to be proved on behalf respectively of Maguire and Shore, and supported by close reasoning his argument that those pris-

oners had not cleared themselves of that share of participation in the riot to which Crown witnesses had positively deposed. The learned attorney general, in conclusion, said that, as far as concerned any comment upon the duty in which the jury were engaged, he had no right to make any observations at all. He was quite certain that, knowing the length to which these trials had run, and knowing the circumstances which had occurred to make them necessary, nobody could doubt that it was right that they should take place at this time, and that the issuing of this commission could have in no way affected the special interests of the prisoners at the bar. He did not for one moment suppose that the proper course had not been taken for the defence of the prisoners by those who had undertaken it, and in one respect he fully joined in the observations of the learned counsel for the prisoners, when a hope was expressed that this might be the last time a necessity would arise for such a trial, and that if nothing else should arise from it he did most sincerely hope it might have at least this advantage—that it might show those who believed they could upset the constitution, and affect the interests of this country by engaging in the insane conspiracy called Fenianism, that they had not a chance of doing so. The feelings of the people of this country would prevent that from ever being done by such conspirators as these, and he trusted that the example which was here made of allowing prompt justice to follow the commission of a desperate act might have the effect of warning others that no such act could be committed without stringent measures being taken for the protection of her Majesty's subjects and the prevention of such acts for the future. [These words were followed by an attempt at applause, which was immediately overpowered by the officials.]

Before the judge proceeded to deliver his charge to the jury, the jurors, who had been directed to remain in attendance on the supposition that it would be possible to enter upon another trial while the first jury retired to consider their verdict, were allowed to leave court, being directed to attend at 9 o'clock next morning. Shortly before four o'clock, Mr. Justice Blackburn began to sum up, and was going through the evidence when our report was despatched.

[From the London Times, November 4, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Saturday.*

The closing scene of the first of the "Fenian trials" is one that will long remain in the recollection of all who witnessed it. After a trial extending over four long and anxious days, in which nothing was more remarkable than the studied impartiality and calmness of the advocates on either side, and the patience and close attention of both judges and jurors. It ended with a burst of passion and an outbreak of fierce political spirit which, till that moment, it had been the common object to deprecate, and, as far as possible, to keep out of sight. The prisoners had listened with comparative indifference to the denunciations by their own counsel of the Fenian conspiracy, regarding what, of course, were perfectly sincere expressions of opinion on the part of those learned gentlemen as strategic feints, perhaps, to dissipate the prejudices existing in the minds of the jurors. They had one and all turned round in the dock and listened with deep attention to the closing observations of the attorney general, in which, briefly but emphatically, he spoke of the wild and hopeless character of the attempt to which desperate men had committed themselves—a reference and a warning which would have drawn from the audience an approving cheer, but that the first indications were instantly suppressed. And the prisoners had listened, with the sympathy natural in their position, to the remarks of the judge, condemnatory of the system of rewards for evidence or information, which, he said, was sometimes held back and sometimes fabricated in expectation of reward, and always, when given, exposed to suspicion, or at least to comment. But no one could have anticipated that, when at length after the expiration of an interval of two hours the jury came into court with a verdict of guilty against all the prisoners, the mask would have been so completely and defiantly thrown off. Everybody felt beforehand that of the five men in the dock four at least had sacrificed themselves to cover the escape of Kelly and Deasy; for it is no violent presumption that where two men handcuffed were able to get clear away, four men with their limbs unshackled and heavily armed to boot might have vanished if so minded. But few had thought it likely, after the studied moderation of the defence, that the audacity of the van attack would be repeated in the dock, or were prepared for the avowal of principles subversive of all settled government in this country, which the prisoners seemed to feel a pride in making. They spoke, some of them passionately, and some deliberately, but all from the bottom of their hearts. Shore (or, as he now calls himself, Condon) has a decided American accent, but with an accompanying thickness of utterance. Gould, alias O'Brien, who is said to have borne a commission in the federal service, looks least like either an Irishman or an American, but his tones bear out his own assertion that he comes originally from the county of Cork. Allen, who is under twenty years of age, is in the first heat of republican theories. Larkin made the frankest and most manly speech of all. Gould had prepared, or some one had prepared for him, a stock address upon the wrongs of Ireland, which went off on the whole flatly,

and was handed afterwards by him to his attorney, with an evident view to publication. But whenever, in the course of unpremeditated speech, if any of the addresses from the dock were really unpremeditated, mention was made by either prisoner of the name of Ireland, then on the part of all the rest there was a subdued groan or chorus in that deep swelling under-tone in which the Irish grief or passion so naturally vents itself. It was a sad—in the present day unaccountable—spectacle almost to see men of intelligence in such a position; but on the part of all four there was not a symptom of flinching. With regard to Maguire, his case stands on a different footing, and, notwithstanding the finding of the jury, public opinion is still much divided about his guilt. As a marine home on furlough the judge pointed out in his summing up he would be less likely to have intimate relations with conspirators than if resident in Manchester. The evidence was least positive against him; he is evidently an ignorant, humble man, partial to liquor, but quiet and inoffensive. English neighbors of his own class came forward in support of his *alibi*; and after conviction Maguire pointed out fairly enough that if he or members of his family were disloyal, it was not likely that he would have been re-enlisted, after twelve years' service, in such a corps as the Royal Marines, for an extended period. In the dock he certainly held aloof from the other four prisoners; and there was in many quarters an expectation that he would have been acquitted. Owing to the hour at which the proceedings terminated, and the length to which the despatch extends, nearly all the telegraphic summaries contain inaccuracies or abridgments. The following is a complete account of a scene memorable among English trials.

On the prisoners' being asked whether they had anything to say—

Allen said: My lords and gentlemen, it is not my intention to occupy much of your time in answering your question. Your question is one that can be easily asked, but requires an answer which I am ignorant of. Able and more eloquent men could not answer it. Where were the men who have stood in the dock—Burke, Emmett, and others who have stood in the dock in defence of their country? When the question was put what was their answer? Their answer was null and void. Now, with your permission, I will review a portion of the evidence that has been brought against me.

Mr. Justice BLACKBURN. It is too late to do that. Probably you did not understand the question. The evidence has been commented upon, and the jury have found their verdict. We have neither the power nor the right to alter or review it. If you have any reason to give why, either upon technical or moral grounds, the sentence should not be passed upon you, we will hear it; but it is too late for you to review the evidence to show that it was wrong.

ALLEN. Well, sir, cannot that be done in the morning?

Mr. Justice BLACKBURN. It cannot be done at any time when the verdict has been passed by the jury, after carefully considering the evidence; neither the judges nor any one can alter or review it in any way. If any application is to be made for mercy, or to the equitable consideration of the Crown, if there is any ground for that, it must be shown elsewhere. We can only take the verdict as right, and the only question is why judgment should not follow.

ALLEN. Yes, sir, I have much to say.

Mr. Justice BLACKBURN. Well, we will hear you.

ALLEN. No man in this court regrets the death of Sergeant Brett more than I do, and I positively say, in the presence of the Almighty and ever-living God, that I am innocent—aye, as innocent as any man in this court. I don't say this for the sake of mercy; I want no mercy—I'll have no mercy. I'll die as many thousands have died, for the sake of their beloved land, and in defence of it. I will die proudly and triumphantly in defence of republican principles and the liberty of an oppressed and enslaved people. Is it possible we are asked why sentence should not be passed upon us—on the evidence of prostitutes of the streets of Manchester, fellows out of work, convicted felons—aye, an Irishman sentenced to be hung when an English dog would have got off? I say, positively and defiantly, justice has not been done me since I was arrested. If justice had been done me I would not have been handcuffed at the preliminary investigation in Bridge street; and in this court justice has not been done me in any shape or form. I was brought up here, and all the prisoners by my side were allowed to wear overcoats, and I was told to take mine off. What is the principle of that? There was something in that principle, and I say positively that justice has not been done me. As for the other prisoners, they can speak for themselves with regard to that matter. And now with regard to the way I have been identified. I have to say that my clothes were kept for four hours by the policemen in Fairfield station, and shown to parties to identify me as being one of the perpetrators of this outrage on Hyde road. Also in Albert street station there was a handkerchief kept on my head the whole night, so that I could be identified the next morning in the corridor by the witnesses. I was ordered to leave on the handkerchief for the purpose that the witnesses could more plainly see I was one of the parties who committed the outrage. As for myself, I feel the righteousness of my every act with regard to what I have done in defence of my country. I fear not. I am fearless—fearless of the punishment that can be inflicted on me; and with that, my lords, I have done. (After a moment's pause.) I beg to be excused. One remark more. I return Mr. Seymour and Mr. Jones my sincere and heartfelt thanks for their able eloquence and advocacy of my

part in this affray. I wish also to return to Mr. Roberts the very same. My name, sir, might be wished to be known. It is not William O'Meara Allen. My name is William Philip Allen. I was born and reared in Bandon, in the county of Cork, and from that place I take my name, and I am proud of my country and proud of my parentage. My lords, I have done.

The prisoner Larkin said: I have only got a word or two to say concerning Sergeant Brett. As my friend here said, no one could regret the man's death as much as I do. With regard to the charge of pistols and revolvers and my using them, I call my God as a witness that I neither used pistols, revolvers, nor any instrument on that day that would deprive the life of a child, let alone a man. Nor did I go there on purpose to take life away. Certainly, my lords, I do not want to deny that I did go to give aid and assistance to those two noble heroes who were confined in that van—Kelly and Deasy. I did go for to do as much as lay in my power to extricate them out of their bondage; but I did not go for to take life, nor, my lords, did any one else. It is a misfortune there was life taken, but if it was taken it was not done intentionally; and the man who has taken life, you have not got him. I was at the scene of action, when there were over, I dare say, one hundred and fifty people standing by there when I was. I am very sorry I have to say it, my lord, but I thought I had some respectable people come up as witnesses against me; but I am sorry to say, as my friend said—I will make no more remarks concerning that. All I have to say, my lords and gentlemen, is that so far as my trial went, and the way it was conducted, I believe I have had a fair trial. So far as my noble counsel went they did their utmost in the protection of my life; likewise my worthy solicitor, Mr. Roberts, has done the best; but I believe the old saying is a true saying, that what is decreed a man in the page of life he has to fulfil it, either on the gallows, or drowning, or a fair death in bed, or on the battle-field. So I look to the mercy of God. May God forgive all who have sworn my life away. As I am a dying man, I forgive them from the bottom of my heart. May God forgive them.

Gould said: I shall commence by saying that every witness who has sworn anything against me has sworn what is false. I have not thrown a stone to my recollection since I was a boy. I had no pistol in my possession on the day when it is alleged this outrage was committed. You call it an outrage, I don't. I say further my name is Michael O'Brien. I was born in the county of Cork, and have the honor to be a fellow-parishioner of Peter O'Neale Crawley, who was fighting against the British troops at Mitchellstown last March, and who fell fighting against British tyranny in Ireland. I am a citizen of the United States of America, and if Charles Francis Adams had done his duty towards me, as he ought to do in this country, I would not be in this dock answering your questions now. Mr. Adams did not come, though I wrote to him. He did not come to see if I could not find evidence to disprove the charge, which I positively could if he had taken the trouble of sending or coming to see what I could do. I hope the American people will notice that part of the business. (The prisoner here commenced reading from a paper he held in his hand.) "The service of man is freedom. The great God has endowed him with affections that he may use, not smother them, and a world that it may be enjoyed. Once a man is satisfied he is doing right and attempts to do anything with that conviction he must be willing to face all the consequences. Ireland, with its beautiful scenery, its delightful climate, its rich and productive lands, is capable of supporting more than treble its present population in ease and comfort. Yet no man, except a paid official of the British government, can say there is a shadow of liberty, that there is a spark of glad life among its plundered and persecuted inhabitants. It is to be hoped that its imbecile and tyrannical rulers will be forever driven from her soil amid the execration of the world. How beautifully the aristocrats of England moralize on the despotism of the rulers of Italy and Dahomey; in the case of Naples with what indignation did they speak of the ruin of families by the detention of its head or some loved member in a prison! Who have not heard their condemnation of the tyranny that would compel honorable and good men to spend their useful lives in hopeless banishment."

Mr. Justice BLACKBURN. I am sorry to interrupt you, and I do it entirely for your own sake. What you are now saying cannot in the slightest degree prevent the sentence of the law from being passed upon you. You seem to be reading something that has been prepared for you by others, the only possible effect of which must be to tell against you with those who have to consider the sentence. I advise you to say nothing more of that sort. I do so entirely for your own sake.

GOULD. Well, sir, I prefer saying it.

Mr. Ernest Jones spoke to the prisoner, apparently dissuading him from proceeding with his speech, but without effect.

Gould went on to read: "They cannot find words to express their horror of the cruelties of the King of Dahomey because he sacrificed 2,000 human beings yearly; but why don't those persons who pretend such virtuous indignation at the misgovernment of other countries and people look at home and see if greater crimes than those they charge against other governments are not committed by themselves or by their sanction. Let them look at London and see the thousands that want bread there, while those aristocrats are rioting in luxuries and crimes. Look to Ireland, see the hundreds of thousands of its people in misery and want. See the virtuous, beautiful, and industrious women who only a few years ago—aye, and yet, are obliged to look at their children dying for want of food. Look at what is called

the majesty of law on one side, and the long, detestable misery of a noble people on the other. Which are the young of Ireland to respect—the law that murders or banishes their people, or the means to resist relentless tyranny and of ending their miseries forever under a home government? I need not answer that question here. I trust the Irish people will answer it to their satisfaction soon. I am not astonished at my conviction. The government of this country have the power of convicting any person. They appoint the judge; they choose the jury; and by means of what is called patronage (which is the means of corruption) they have the power of making the laws to suit their purposes. I am confident that my blood will rise a hundredfold against the tyrants who think proper to commit such an outrage." In the first place I saw I was identified improperly by having sworn to my throwing stones and time of identification, and thus the witnesses who, as those ladies said, at the jail gates, firing a pistol have sworn to what is false, for I was Mr. Roberts for his attention to my case. I thank my counsel for their able defence, and also to say. All the witnesses who came up

The prisoner McGuire said: I have a few words to say in this place. This makes the third time against me were all perjured. I have been away from my family, and I always enjoyed myself I have been on furlough since I have been in the red. I had only been down a month and very well, and did this time till this affair happened. I had been away three years and five months in four days when this occurrence took place. I had, and came to see my friends on furlough. the Princess Royal. I had been to China and Japan themselves. It is false identity altogether. The witnesses who swore against me have perjured house till seven that night, when I went with regard to me. I had not been out of my own ten. With regard to the question of my to a music hall, and did not leave till over half-past five been on furlough, because I have had getting up late, it was a regular practice since I have many rough nights, and many ups and very hard times and night watches. I have had so I have not had much time in England downs. I have passed ten years of my life at sea, and during that time I was taken suddenly to know any one. I thought I would enjoy myself that day, I assure you. Another thing deny. I won't tell no lies. I didn't feel very well that night I thought it was for being in civil want to make a remark on. When I was taken there, this occurrence do you think, my lord, I had vilian's clothes; and if I had been in that outrageous my clothes and put on my uniform, not ample time before I was taken to go and charged? It is a false identity, a mistaken identity which I had in my own house, so as to avoid identity. I never had no correspondence with no tity, the Lord knows, this blessed and holy night. ted with Fenianism, so far as I know; I one, and there was never one of my people connected if I had not had a good character I should always behaved well to my Queen and country, and months ago, when I was at Hong Kong, not have been taken on for a second period twelve the captain of the Princess Royal sent and I wrote to the captain I have served with, and my marines with me in that ship; but the me down a letter to-day. I wrote to the captain one, because I have a letter in my pocket. answer has not arrived yet, but is expected to arrive from Captain Bennett, that I served with, I have got two more, one from the ship and another error. I was in that ship when she was and he was captain of her Majesty's ship Conqueror. Your lordship can see—my general charwrecked, and he sent me down a character, which on. Your lordship, if ever there was an actor in that ship all the time she was in commission man with regard to this charge. If innocent man before you at the bar, I am an innocent an innocent man. I never was near the ever there was an innocent man in the world, I am I never was out in that direction in my place, nor would I know my way about Bellevue. othing about it? I would not know the life. Is that sentence to be passed when I know ne to say, but give my best thanks to Mr. direction if I was not shown it. I have got no more, who has conducted the case. But O'Brien and Mr. Cottingham; likewise to Mr. Rol

it is a false identity with regard to me altogether. e upon me somewhat by surprise. It appeared to me rather strange that, upon any amount of evidence, which, of course, was false, a man could have been convicted of wilfully murdering others he never saw nor heard of before he was put in prison. I do not care to detain your lordships, but I cannot help remarking that Mr. Shaw, who has come now to gloat upon his victims, after having sworn away their lives, that man has sworn what is altogether false: and there are contradictions in the depositions which have not been brought before your lordships' notice. I suppose, the depositions being imperfect, there was no necessity for it. As I told Mr. Barry, he swore at his first examination before the magistrates that a large stone fell on me—a stone which Mr. Roberts said at the time would have killed an elephant. But he swore to me as exhibiting the stone having head; and if I was to go round the country and hear to it, I do not know which would be fallen on me, and him as the man who would swear has been accepted by the jury; now he looked for with the most eagerness. However, I consider. I have been sworn to, I believe, says he only thinks so. There is another matter to consider. I have been sworn to, I believe, by some of the witnesses who have sworn also to others have an overwhelming *alibi*, and I were in another city altogether—in Liverpool. O suppose your lordships cannot help that. should by right have been tried with them; but I swore to another prisoner. He identified We have, for instance, Thomas, the policeman, who arrested for two days afterwards. As for him on a certain day, and the prisoner was not believe him. He had heard of the blood Thomas, I do not presume that any jury could high for it. My *alibi* has not been strong, money, and of course was prepared to bid pretty high

and unfortunately I was not strong in pocket, and was not able to produce more testimony to prove where I was at exactly that time. With regard to the unfortunate man who has lost his life, I sympathize with him and his family as deeply as your lordships, or the jury, or any one in the court. I deeply regret the unfortunate occurrence, but I am as perfectly innocent of his blood as any man. I never had the slightest intention of taking life. I have done nothing at all in connection with that man, and I do not desire to be accused of a murder which I have not committed. With regard to another matter, my learned counsel has, no doubt for the best, expressed some opinions on national matters. I hold my own opinions on those matters and the misgovernment to which my country has been subjected. I am firmly convinced there is prejudice in the minds of the people, and it has been increased and excited by the newspapers, or by some of them, and to a certain extent has influenced the minds of the jury to convict the men standing in this dock on a charge which a learned gentleman remarked a few nights since, they would be acquitted if they had been charged with murdering an old woman for the sake of the money in her pocket, but a political offence of this kind they could not. Now, sir, with regard to the opinions I hold on national matters. With regard to those men who have been released from that van, in which, unfortunately, life was lost, I am of opinion that certainly to some extent there was an excess. Perhaps it was unthought, but if those men had been in other countries, occupying other positions, if Jefferson Davis had been released in a northern city, there would have been a cry of applause throughout all England. If Garibaldi, who I saw before I was shut out from the world, had been arrested, was released, or something of that kind had taken place, they would have applauded the bravery of the act. If the captives of King Theodore had been released, that too would have been applauded. But as it happened to be in England, of course it is an awful thing, while yet in Ireland murders are perpetrated on unoffending men, as in the case of the riots in Waterford, where an unoffending man was murdered, and no one was punished for it. I do not desire to detain your lordships. I can only say that I leave this world without a stain on my conscience that I have been wilfully guilty of anything in connection with the death of Sergeant Brett. I am totally guiltless. I leave this world without malice to any one. I do not accuse the jury, but I believe they were prejudiced. I don't accuse them of wilfully wishing to convict, but prejudice has induced them to convict when they otherwise would not have done. With reference to the witnesses, every one of them has sworn falsely. I never threw a stone or fired a pistol. I was never at the place as they have said. It is all totally false; but as I have to go before my God, I forgive them. They will be able to meet me some day before that God who is to judge us all, and then they and the people in this court, and every one, will know who tells the truth. Had I committed anything against the Crown of England I would have scorned myself had I attempted to deny it; but with regard to those men, they have sworn what is altogether false. Had I been an Englishman, and arrested near the scene of that disturbance, I would have been brought as a witness to identify them; but, being an Irishman, it was supposed my sympathy was with them, and on suspicion of that sympathy I was arrested, and in consequence of the arrest and the rewards which were offered I was identified. It could not be otherwise; as I said before, my opinions on national matters do not at all relate to the case before your lordships. We have been found guilty, and as a matter of course we accept our death as gracefully as possible. We are not afraid to die, at least I am not. (Several of the other convicts said, "Nor I.") I have no sin or stain upon me, and I leave this world at peace with all. With regard to the other prisoners who are to be tried afterwards, I hope our blood at least will satisfy the craving for it. I hope our blood will be enough, and that those men, who I honestly believe are guiltless of the blood of that man, that the other batches will get a fair, a free, and a more impartial trial. We view matters in a different light from what the jury do. We have been imprisoned, and have not had the advantage of understanding exactly to what this excitement has led. I can only hope and pray that this prejudice will disappear, that my country will right herself some day, and that her people, so far from being looked upon with scorn and aversion, will receive what they are entitled to, the respect not only of the civilized world, but of Englishmen. I, too, am an American citizen, and on English territory I have committed no crime which makes me amenable to the Crown of England. I have done nothing, and as a matter of course I did expect protection—as this gentleman (pointing to Gould) has said, the protection of the ambassador of my government. I am a citizen of the State of Ohio, but I am sorry to say my name is not Shore. My name is Edward O'Meagher Connor, (or Condon,) of Cork county. I belong to Ohio, and there are loving hearts there that will be sorry for this. I have nothing but my best wishes to send them, and my best feelings, and assure them that I can die as a Christian and an Irishman; and that I am not ashamed or afraid of anything I have done or the consequences, either before God or man. They would be ashamed of me if I was in the slightest degree a coward, or concealed my opinions. The unfortunate divisions of our countrymen in America have, to a certain extent, neutralized our efforts that we have made either in one direction or another for the liberation of our country. All these things have been thwarted; and as a matter of course we must only submit to our fate. I only trust again that those who are to be tried after us will have a fair trial, and that our blood will satisfy the craving which I understand exists. You will soon send us before our God, and I am perfectly prepared to go. I have nothing to regret, or to retract, or take

back. I can only say, God save Ireland! (This cry was repeated by several of the other convicts.)

Could added: I wish to add a word or two. There is nothing in the close of my political career which I regret. I don't know of one act which could bring the blush of shame to my face, or make me afraid to meet my God or fellow-man. I would be most happy, and nothing would give me greater pleasure than to die on the field for my country in defence of her liberties. As it is, I cannot die on the field; but I can die on the scaffold, I hope, as a soldier, a man, and a Christian.

The usual proclamation was then made, and both judges put on the black caps.

Mr. Justice Mellor, addressing the prisoners, said: You have been severally convicted, after a full, patient, and impartial investigation, of the crime of wilful murder. No person who has witnessed these proceedings can doubt the propriety of that verdict upon the evidence that has been given before the jury. Your crime was attended by circumstances of peculiar audacity. In the daytime, in the immediate vicinity of this populous city, you succeeded in rescuing prisoners from the custody of the law. This is a crime which strikes at the very foundations of civil society, and were it possible that it could be committed without bringing down condign punishment upon its perpetrators, it would deprive the subjects of the realm of all sense of security for their lives and property, and would completely throw us back into a reign of terror and violence. The unfortunate man Charles Brett, whom you killed, was not an ordinary citizen; he was a policeman charged with the custody of persons who were committed upon serious offences against the law, and you made him the victim of your violence, because, in the courageous execution of his duty, he would not yield to your unlawful threats. I quite believe that none of you entertained any actual malice against the individual Charles Brett; and I doubt not that you would have much preferred that he should have yielded the keys and suffered you to rescue the prisoners whose rescue you had conspired to effect. While I say this I am not the less perfectly convinced that all of you had resolved, at any risk, and by any amount of dangerous violence and outrage, to accomplish your object: and that, in fact, Charles Brett was murdered because it was essential to the completion of your common design that he should be. So far as the interests of the community are concerned there is no offence which can be committed of a graver nature, or which demands at the hands of justice more exemplary punishment. There is but one sentence which the law assigns to the offence. It is not my sentence, but it is the sentence of the law. I have not the power to modify it, nor to discriminate between the various perpetrators of the offence. I should be deluding you into a false security if I were to hold out to any of you any expectation that your lives may be spared, or that you can derive any advantage from the points of law which were urged by your counsel. I beseech you, therefore, most earnestly to apply yourselves with all diligence to make your peace with God. Repair, I entreat you, in penitence and in prayer, to the Cross of Christ, from which no penitent sinner was ever spurned away. I have now only to perform the solemn duty which devolves upon me to pass upon you the sentence of the law. That sentence is that you, and each of you, be taken hence to the place whence you came, and thence to a place of execution, and that you be there hanged by the neck until you shall be dead, and that your bodies be afterwards buried within the precincts of the prison wherein you were last confined after your respective convictions; and may God, in his infinite mercy, have mercy upon you!

Before the prisoners left the bar they reached over and shook hands warmly with their counsel and solicitor, and one or two of them glanced eagerly around the court to see if there was any sympathetic face they knew. They looked hard at two or three persons, but made no gesture of recognition. Larkin exclaimed as he went down, "God be wid yez, Irishmen and Irishwomen!"

THE SECOND TRIAL.

At the sitting of the court this morning six other prisoners were put forward and indicted for having on the 18th of September feloniously, wilfully, and of malice aforethought, killed and murdered Charles Brett, viz: William Martin, John Francis Nugent, Patrick Coffey, John Bacon, John Brannen, and Timothy Fetherston. All the prisoners pleaded "Not guilty," and one, Coffey, "No more than you, sir."

The attorney general not being at the moment in court, Mr. Justice Blackburn, addressing Mr. Pickering, Q.C., stated the course which their lordships proposed to take. Mr. Justice Mellor would sit with him till the first jury was sworn, and then would proceed into the other court and try a separate indictment.

Mr. Digby Seymour said the course which it appeared the Crown proposed to take filled him with surprise. Verdicts of "Guilty" having been obtained against five men for the death of one, he certainly expected that the other prisoners would be tried upon one or other of the indictments, eight in all, charging minor offences. As it appeared that the indictments for murder were to be pressed, he certainly should object to being deprived of the services of his junior, who would have to go into the other court under the arrangement proposed by the judge.

Mr. Justice BLACKBURN. I cannot possibly help that. I stated very early, at the beginning of the assize, the course which we proposed to take, and arrangements could easily have been made by counsel.

Mr. SEYMOUR. At the time the suggestion was made I said there would be no objection on the part of counsel to any reasonable course; but at that time I was cognizant of the fact that a great number of indictments had been found by the grand jury, and it never occurred to me that after a conviction of five men had been obtained six more would be placed upon their trial for murder; and my own impression, I find, is borne out by public opinion.

Mr. Justice BLACKBURN. I cannot help that; there is no reason why the trials should occupy exactly double the time that is necessary.

Mr. SEYMOUR. My learned friend, Sergeant O'Brien, may take his own course; but, as counsel both for the second five and these six men now in the dock, I cannot help saying that I protest against my humble services, if they are worth anything, being withheld from men in the other court who are as well entitled to them.

Mr. Ernest Jones said he was counsel without a leader for some of the prisoners, and there being but one attorney for all the accused, it followed that the prisoners tried in one of the courts would be deprived altogether of the services of their attorney, without whom it would be most difficult, if not practically impossible, for counsel to conduct the defence.

The judges having conferred, Mr. Justice Blackburn said he certainly understood that the course which he proposed at the outset had been thoroughly understood and assented to, and certainly very fair time had since elapsed for other arrangements to be made among the prisoners' counsel as to the manner in which the defence should be conducted. He could not but think, therefore, that the opposition was a mere gratuitous and unnecessary waste of public time; but, though such was his opinion, he did not think it would be right, where prisoners' counsel complain that a great hardship would thereby be inflicted upon them, to insist upon his own view. For to-day, therefore, both the judges would sit together, but he hoped that next week arrangements would be made finally as to which of the counsel would act in the different courts.

Mr. SEYMOUR. I protest on my own part against your lordship supposing that I have made this objection for the purpose of gratuitously wasting the public time.

Mr. Justice BLACKBURN. I did not say what the object was, Mr. Seymour. I spoke of the effect.

The ATTORNEY GENERAL. After the course which my learned friends, naturally anxious for the interests of those whom they represent, have felt it right to take, it becomes necessary for me to inquire whether they sever in their challenges. If so, obviously, the prisoners must be tried separately. I have not the least desire in the world that any inconvenience should be entailed upon my learned friends. I am most anxious that all the ability and all the ingenuity displayed by them in the first trial should be displayed by them on behalf of every one of these men.

Mr. SEYMOUR. I object to the word "ingenuity."

The ATTORNEY GENERAL. It can hardly be necessary for me to say that the word was not used in any offensive sense—quite the contrary.

Mr. Justice BLACKBURN. Nobody could take it as being intended otherwise than as a compliment.

Mr. SEYMOUR. I do not take it as such.

The attorney general said there were two indictments, one embracing five and the other six prisoners, upon either of which the Crown were prepared to proceed at once, and he wished to know which indictment it would be most for the convenience of all parties to take first.

Mr. Justice BLACKBURN. Which do you propose to take?

The ATTORNEY GENERAL. It is immaterial to me.

Mr. Justice BLACKBURN. In that case it will be for the prisoners' counsel to make their election.

Sergeant O'Brien and Mr. Seymour said they would take the case first of the men in the dock.

Mr. DIGBY SEYMOUR. I wish it to be understood that I can consent to no arrangement by which men shall be tried for their life in one court while their counsel are necessarily absent in another. And, in saying this, I am not consulting my own convenience in any way; if I had my own wish I should not be here at all. It is a great mental and physical strain upon me to be here.

Mr. Justice BLACKBURN. We are going at present to try this case, Mr. Seymour.

Mr. SEYMOUR. But your lordship mentioned an arrangement for next week, and I wished to guard myself against being supposed to be a consenting party.

In reply to the court, Mr. Seymour stated that he appeared with Mr. E. Jones for the prisoners Brannon, Fetherstone, and Nugent; and Sergeant O'Brien, with Mr. Cottingham, for Martin, Coffey, and Bacon.

A long discussion then took place as to the mode in which the challenges should be exercised, a point necessarily involving the decision whether the prisoners should be tried together or separately.

The attorney general said that if the prisoners were each about to exercise twenty challenges peremptorily, the jury list would necessarily be exhausted; it therefore became indispensable, unless some arrangement were made, to proceed with the trial of the first prisoner (Martin) separately.

Mr. Seymour challenged the first juror called, when his attention was drawn to the fact that Martin was not among the three for whom he appeared. The learned counsel said there had been a mistake in giving the names.

Some further conversation took place upon this point. Eventually it was agreed that Mr. Seymour, with Mr. Jones, should act for the first three prisoners, and Sergeant O'Brien, with Mr. Cottingham, for the three last-named; that the entire six should be tried by the same jury, and that in swearing in the members a total of forty peremptory challenges should be allowed. All jurors resident in or in the immediate vicinity of Manchester were peremptorily challenged, and after the prisoners' challenges had all been exhausted the Crown lent its assistance by ordering some jurors to stand by, to whom objection had been taken on this ground. Two or three jurors were also set aside at the instance of the Crown itself.

The prosecution was conducted as before by the attorney general, Mr. Pickering, Q. C., Mr. Sowler, Q. C., Mr. Hannen, and Mr. Higgin.

The attorney general then proceeded to open the case on behalf of the prosecution. His speech necessarily was in great part a recapitulation of the facts already published. With regard to the prisoners, he said evidence would be given that Nugent, having a pistol in hand, took part in the attack, and that the other prisoners also were more or less active in the affray. It would be shown that some of them were not only present at the actual assault upon the van, but had been seen previously during the afternoon in the immediate neighborhood of the arch where the attack was made. One of the prisoners, Bacon, a lame man, would be spoken to particularly as being engaged at the back of the van, and also in waiting till the van arrived. The attack was one of a most desperate character; it took place in broad daylight, and the jury, he thought, could have little doubt that it was carried out by combination and express design, in order to release two prisoners, and with the full intention of using any force which might be necessary for that purpose. A strong body of evidence would be adduced against all the prisoners. As regarded some of them, an attempt would be made to show that the witnesses were mistaken in their identity. To such evidence as might be offered on the part of the prisoners themselves, with that object in view, the jury would give the most careful attention; and having bestowed the fairest and fullest consideration upon the evidence at both sides, it would be for them to say whether they had any reasonable doubt that the prisoners, or any of them, were engaged in the attack which resulted in the death of Brett. In case they had no such doubt, it would be their duty, under the direction of his lordship, to find the prisoner guilty of the offence laid to his charge.

JOSEPH YARWOOD, police constable, was examined by Mr. PICKERING, Q. C., and gave evidence as to the general nature of the attack on the police van on the 15th of September. When the horses were shot, or shot at, by Larkin and Gould, the men came down more thickly than before from the public houses and from the embankment to the attack. Did not remember seeing pistols with other men besides those who shot the horses. On returning from the jail, where he had been to give the alarm and obtain assistance, he went, in consequence of information, to the Wellington inn, about forty or fifty yards from the Hyde-road inn, nearer to Manchester. There saw the prisoner Bacon. Had not noticed any of the prisoners at the time of the attack.

Cross-examined by Mr. SEYMOUR: Could not swear that the horses were actually shot, but judged by their prancing that they were.

Cross-examined by Mr. Sergeant O'BRIEN: Before the van was fully stopped it had cleared the arch.

Mr. ROYAL, surveyor, produced and proved a plan and model of the scene of the attack.

SETH BROMLEY, the constable, who was shot in the leg by Allen, gave evidence as to the portion of the affray which he witnessed.

Cross-examined by Mr. SEYMOUR: Was five or six yards away from Trueman, and about twenty yards from the arch, when Allen fired at Trueman. Saw the shot strike Trueman's coat; at least it "ruz the smoke when it struck the cloth."

Mr. SEYMOUR. A ball would not carry smoke, you know?

WITNESS. It did when it hit my leg, just as if you struck a lucifer match.

Cross-examined by Mr. Sergeant O'BRIEN: I did not cry out when I was struck. I got under the arch. Plenty of people saw that I was shot.

THOMAS PATTON, puddler, who witnessed the attack from Hayes's brick-croft, was next examined. He said he saw Allen with two revolvers, both of which he placed in the ventilator and then fired. When endeavoring to make his escape after the attack, Allen had still the two revolvers, with which he threatened to shoot any one who followed him. Could not speak to any of the prisoners being there except Martin, who threw stones and was generally assisting.

Cross-examined: I was sitting down stunned, as if spell-bound, on the wall during the affray. Could hear and see everything that passed. Was perfectly cool and calm, but could not stir. I tried to get up once when they were throwing stones, but could not. My legs were as if they were stiff. My arms were loose enough. I only tried once to get away till it was all over. The stiffness got out of my legs then. I did not take to my heels, or my soles either. I went first to look at Brett, and then followed quickly across the field. No pistol shots came near where I was. I saw two revolvers with Allen—not a hammer and revolver. I saw him put both into the ventilator. They were not near each other. I don't

know whether he stood on the step to do so or not. I was not looking at his feet, but at what he was doing with his hands. I never "seed" him stoop or aim. He put the pistol in and fired. Could see his hat and coat, but not his feet. I could see his shoulders, couldn't I. I could see the handles of the revolvers, but not the barrels; he stuck to the handles. When I went to see Martin he had irons on his legs; he was fastened to Gould, not to a man with a plaster on his head. Had never seen Martin nor heard him speak till that day. He was there much more than a minute. He was there running about getting stones. I will swear that I had him under my eye for three or four minutes. I do not know what sort of a hat he had on. Will not swear whether it was a billycock or a tall hat.

MR. SEYMOUR. Come, sir, will you swear whether it was a billycock or not?

WITNESS. No, I won't swear.

MR. SEYMOUR. Was it a billycock or not?

WITNESS. I won't swear. Do you want me to tell lies?

MR. SEYMOUR. No, sir, I don't; but you had better not be impudent to me.

MR. JUSTICE BLACKBURN. I must say I do not think the witness deserves that imputation. He answered your question very fairly, and then you proceeded to speak to him in an angry tone.

TO MR. JUSTICE MELLOR: I cannot say whether there were more men ironed than the two at the time I identified the prisoner.

By arrangement, and with a view to save lengthened explanation, the jury were here taken to view the police van. The attorney general stated that he would call only such witnesses on the general part of the case as were necessary to a clear understanding of the nature of the attack.

EMMA HALLIDAY was next examined. She was one of the women who were being removed to jail in the central corridor of the police van, and saw the fatal shot fired.

Cross-examined by MR. D. SEYMOUR: Only heard three shots fired—one at the horses, one before Brett was killed, and the one that killed Brett. Only saw one pistol put through the ventilator.

Re-examined: Was much frightened at the time.

JOSEPH PARTINGTON, a boy confined in one of the cells of the police van, deposed that he heard the van struck by shots and stones. Heard the women cry out when Brett was killed, and saw Allen come into the van and ask, "Where's Kelly?" Saw the handcuffed men go out.

Cross-examined: Heard only three shots altogether.

JOHN ACCORNLEY, a new witness, about fourteen years of age, deposed that he was going upon a message for his mother on the 18th of September, and saw the prison van, which was at that time stopped under the arch. Saw the prisoner Martin with a pistol in each hand, threatening to blow anybody's brains out who came near him. Could not speak to any of the other prisoners. Heard about six shots while he remained; did not hear any other noises while he remained, or see anybody on the roof of the van. Saw policemen in a cab behind the van. Others in the road were attempting to rush at the prisoners, but were chased back again. They ran them along with pistols in their hands. Did not see any stones thrown. Saw persons going across the brick-field, and followed them with Mr. Howard and Mr. Baxter. They three went down the Ashdown road.

Cross-examined by MR. SEYMOUR: Left home about twenty minutes to four. Could not say how far his house was from the railway arch. Got there about a quarter to four. It was not more than five minutes' walk. Kept away from the shots as well as he could. Got on a bank on the right-hand side of the road. Was about thirteen or fourteen yards from the van. Could not say how far I was from the heads of the horses. I was a bit further up than the van. I was about thirteen yards from the head of the first horse. I was not there above ten minutes. Saw no one on the roof, or hammering at the door. Saw the red-whiskered man (Martin) taken into custody by two policemen on the evening of the same day that the van was stopped. I recognized him the first time I saw him, and showed him to my mother; it was the second time I saw him that I recognized him at the jail. I pointed him out to my mother the first time. I was taken to the jail once, and once to the Albert street station. Saw Martin three times altogether, once at the van, once at the gate, and once at the jail. Heard that a red-whiskered man was taken. Did not hear his name till I went to the jail; that was the day before I identified him. He was in the lobby with a lot more prisoners. He was the only one I could pick out. I was rather frightened, but not stunned or spell-bound. Kept sufficiently far off to be safe. Could not swear positively that the man had more than one pistol, but I think he had two.

Re-examined by MR. PICKERING: I was about sixteen yards from Martin when I saw him at the van. I am sure now he is the man. I went down with my mother to the prison gate to see prisoners being taken. It was then I saw Martin for the second time. There were two lots of prisoners, about twenty in each, and Martin was among the first lot.

TO MR. JUSTICE MELLOR: It was before I saw him at the gate that I heard a red-whiskered man had been taken. I took more particular notice of Martin, because he frightened me with a pistol in each hand, and he said he would blow out anybody's brains who came near. I think there were about forty or fifty men altogether. Martin was the only one I saw with pistols.

To Mr. Justice BLACKBURN: The people Martin was chasing back were coming from the arch side of the van.

Police Constable CARRINGTON, who had seen the attack on the van, deposed that he saw Martin there, shortly before Sprosson was shot in the foot. Twice before the attack he had noticed a man with a crutch near the place, whom he identified as the prisoner, Bacon.

JOSEPH GRIFFITHS, the hairdresser, who had given evidence in the previous case, and whose shop is near the railway arch, was now recalled, and identified Nugent as a man whom he had seen with a revolver near the abutment of the arch before the van came in sight. He then saw eight or a dozen men with revolvers at the side of the embankment, fifteen yards from the arch; Martin was one of them.

Cross-examined: Had never seen Nugent before. Was quite sure both about Nugent and Martin.

GEORGE MULHOLLAND, the boy who distinguished himself in the previous case by the smartness of some of his replies, said he saw Martin on the pavement throwing stones during the attack. This was after the murdered policeman fell out of the van. Before that he noticed Brannan throw a stone at the van door. Did not see that any of the prisoners now in the dock fired.

Cross-examined: Saw Martin run down and captured by a policeman at Bradford.

THOMAS BARLOW, who had witnessed the capture of Allen, Larkin, and Gould, said that afterwards he saw Martin arrested as he stood on the canal bank, about two miles and a half away from where the attack took place.

Cross-examined: Martin was standing quietly looking over the canal bridge as a boat passed. Martin said he had been taking a walk through the park, (Philip's park.)

Re-examined: It was a mile from where Allen was caught that the officers came up with Martin.

By the COURT: Martin did not look puffed, or blown, or muddy.

KATE REILLY, a witness in the previous case, said that when she was near the archway Martin asked her where she was going. Told him she was going to the jail. He asked her what for. Told him she was going to see the chaplain. He told her she should not stir, but she tried to get away. He had nothing in his hand until then, when he held her with one hand, while with the other he pulled from his pocket something with a brass handle, which looked like a carving knife, and said he would run it through her if she stirred. He left her standing there, and she did not see him again. She noticed Brannan come out of one of the public houses close by.

Cross-examined by Mr. SEYMOUR: Witness did not tell the police about it till after reading the placard of a reward outside the station door. When she saw him in the prison he had a brass plate in his hand. Heard the papers read in the witness room. Had been twice convicted of felony.

Re-examined: The chaplain had taken an interest in her, and got her a situation. She told him first of what she had seen. Martin did not leave her till two men came out of the police van, and Brett (the deceased) had fallen out.

Police Constable SHAW was recalled to tell his story over again, and he identified Martin as one of those whom he saw driving back the police. He was throwing stones both before and after Brett fell out.

Cross-examined by Mr. SEYMOUR: I was alarmed at first, till I collected my scattered brains together.

Police Sergeant GILL, a new witness, said he apprehended Martin at ten minutes to five on the 18th of September. He was on the canal lock looking towards Stockport, near the Philip's park gates. Witness asked him what he was doing, and he replied "Nothing." Asked him where he was going, and he replied, "Nowhere particular." Told him he was arrested on suspicion of having been present at the attack. Martin then said, "I have a brother that works somewhere about here, and I am going to see him. I know nothing about what you charge me with." He then said, "Will you take me and let me see my brother?" Witness asked him if his brother expected him, and he answered "No." Witness then said he would not go. The man's boots seemed as if he had been in the mud.

By the COURT: He was flushed in the face when I saw him, and he "fixed" me narrowly, and I fixed him, and then made a grab at him.

JOHN KNOWLES, grocer, who witnessed the attack, said he saw Nugent at the van, near the abutment, presenting a revolver. Afterwards saw him throwing stones.

Cross-examined: Did not see him fire.

JOSIAH MUNN, the driver of Slack's omnibus, who had described the attack as he saw it from forty yards distance behind the van, said he noticed Nugent active in keeping back the people, who would have assisted the police if they could.

E. P. RIDGWAY, agent, said he saw Nugent throwing stones at the people before Brett fell out of the van.

JOSEPH SMITH, workman in a boiler shop, said he looked from a window and saw Nugent beside Allen with two revolvers.

At half past three o'clock the court was adjourned till nine on Monday morning.

[From the London Times, November 5, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Monday.*

The judges sat again this morning at 9 o'clock, and resumed the trial of William Martin, John Francis Nugent, Patrick Coffey, John Bacon, John Brennan, and John Fetherstone, on the charge of having wilfully, feloniously, and of malice aforethought, killed and murdered Sergeant Brett.

Constable CHARLES SCHOLEFIELD, one of the policemen in the cab that was following the railway van, deposed that he saw several men looking round the railway arch at the approaching van. Recognizes Nugent as one of the party. Could swear that he was present on that occasion. Had never seen him previously. Saw him afterwards throwing stones at the van when this was stopped—at the policeman and driver on the front of the van. Witness at this time had got out of the cab and went towards the van, under the archway. Went a little through the archway, and the van was further up. Next saw Nugent in custody at Albert street; believed it was on Sunday morning. Others were there in custody at the same time. Knew him as soon as he saw him. The prisoner Martin was also present at the attack on the van. He was standing on the footway, at the left-hand side of the road, all the time that witness was there. Only remained there about five minutes altogether. Was then sent to Fairfield street police station. Saw Martin again the same evening, in custody, by the canal side. Was coming up just behind when he was taken into custody. Had never known Martin before.

Cross-examined by Mr. DIGBY SEYMOUR: At the time he came up Martin was in custody of Inspector Gill. Witness was moving about from place to place while he remained near the van. Had been in court while three other witnesses were under examination.

Re-examined by the ATTORNEY GENERAL: Had gone to Superintendent Maybury of his own accord; told him he was a witness, and was then directed to withdraw.

To a juror: When he saw Martin on the pathway there was no female standing near him.

Police Constable TRUEMAN was the next witness. Saw about 40 men round the van, and from 10 to 15 of those were armed with pistols. The two or three charges made by the police and civilians were beaten back on each occasion with stones and pistols. After the prisoners escaped and the crowd dispersed, Allen and three or four others remained behind. Saw the last shot fired which hit Sprosson in the foot. Observed Nugent three or four times during the attack. The first time he was on the embankment throwing stones at the police; that was on the occasion when the first rush was made and the three shots fired. The second time, witness had just retreated under the railway arch, and looking round he saw Nugent at the back of the van. Saw him again afterwards. Nugent went away with the rest. Witness did not follow the crowd, but took Brett to the infirmary. Was struck with a stone, and also with a shot from a revolver, which bruised his side and made it swell, but did not enter the flesh. About 40 or 50 shots were fired altogether. The affair lasted a quarter of an hour from first to last.

Cross-examined: There was great confusion; people running about here and there. Witness was not altogether as cool then as now. Had never seen Nugent before. When next he saw him Nugent was in custody, and about half a score more with him.

Captain Lane, governor of the city jail, produced the warrants relating to the committal of the prisoners, who, on the 18th of September, were in the police van. He believed that about five or six prisoners in all escaped that day, including Kelly and Deasy.

Mr. Justice BLACKBURN observed that if any legal point was capable of being sustained, with reference to the insufficiency or irregularity of the warrants under which Kelly and Deasy were being removed, the prisoners in this case, of course, would have the same benefits as have been claimed for the prisoners tried under the former indictment.

Cross-examined by Mr. D. SEYMOUR: Several persons, he believed, had been arrested upon suspicion, and afterwards discharged.

Mr. Justice BLACKBURN. What is the object of that question, Mr. Seymour? You may ask a witness whether he himself identified anybody who was afterwards discharged, with a view to test his accuracy; but the fact that others have been taken up against whom no charge is now preferred is nothing to the purpose.

Mr. SEYMOUR. An argument may be based upon it, my lord, as to the uncertainty of identification.

Mr. Justice BLACKBURN. There is the general argument which may be based on one's knowledge of human nature; but for that purpose the question now put is wholly unnecessary.

Mr. SEYMOUR: Your lordship can understand that counsel may be strongly pressed to put a question sometimes.

Mr. Justice BLACKBURN. Certainly, Mr. Seymour; but the exercise of your own discretion may be guided in future by the knowledge that, in my opinion, this was a wholly idle and unnecessary question.

Police Constable JOHN THOMPSON, who had also been in the cab following the van, de-

posed that he saw a great many revolvers in the hands of those surrounding the van. There was a regular volley fired before he got up, and several other shots afterwards. Identifies Nugent as one of those present. Stones were thrown after the police got down from the van. Nugent was apparently trying to break in the van with a large stone. Witness left in a cab to go to the station. Brett had not at that time fallen out of the van. The affray was over before he returned. Witness made an attempt, with others, to get to the van, and was driven back by Nugent and the rest throwing stones.

Cross-examined by Mr. D. SEYMOUR: Did not state before the magistrate that Nugent threw stones at the police. Was not asked the question; only answered the questions put to him. Did state that Nugent attempted to break in the side of the van with a stone. Next saw Nugent on the Saturday following; he was then in custody. Before the magistrates was not clear whether it was on the Thursday or Friday that he had identified him. Was certain now that it was on Saturday. The matter came fresh to his memory a few minutes after he was examined. Did not go back into the box to mention it. Nugent wore a cloth cap, with a peak to it, on the day of the attack; it was not turned up at the sides. Had no ribbon tied across it, that he remembered.

Constable JOHN TAYLOR deposed that he saw a number of men with revolvers standing in line at the edge of the footpath. Was struck with a piece of a brick. Got down off the van and ran down a piece of the road, and got behind an omnibus. Some shots were fired at the people under the arch, and then he went down the road to several houses in the terrace and got an axe. On returning towards the van he saw a number of persons all running away together. Nugent was among the men standing in line with others, and had a revolver; that was before witness was struck. Saw a man with a crutch, but could not tell who he was. Did not see his face. He appeared to be hurrying towards the van: that was when witness was getting up off the road, after rolling down off the van when it was first attacked.

Cross-examined by Mr. SEYMOUR: Did not see Nugent do anything with the revolver. He was not long under his eyes. Had never known him before. His face appeared more dirty, and his clothes darker than those he had on at present; he appeared dirtier altogether. He had a common peak cap, not turned up with a ribbon. Saw Nugent on Sunday, the 22d. Did not then identify him, though he must have seen him. Did identify him on the 25th. Had not seen others identify him meanwhile.

Police Constable JOSEPH HURST, who had been called out of bed about 5 o'clock on the afternoon of the attack, deposed that he saw two men coming from the direction of the Hyde road, flushed and excited. Witness was in plain clothes, and followed them. One of these men was Shore, (or Condon, convicted on Friday.) Believed that the latter man of the two who got away was Nugent, but would not positively swear.

JOHN BEEK, railway clerk, deposed that among the men at the railway arch he saw William Martin throwing stones at the police and civilians; also saw Coffey present.

Cross-examined: Before the magistrates I identified a man named John Martin, not William Martin. I am certain I swore to this man before. I only swore to one Martin. The man I swore to before the magistrates had on a blue tie, but I don't know that he had on a blue tie on the 18th.

Re-examined by the ATTORNEY GENERAL: The prisoner in the dock is the man I call John Martin.

The JUDGE questioned the witness very closely on this point, and he persisted in asserting the accuracy of his recollection and the identity of the prisoner with the man he had seen engaged in the attack.

It transpired that among the prisoners awaiting their trial was a man named John Martin. The judge accordingly directed him to be sent for and confronted with the witness. During the necessary pause in the proceedings—

Mr. Seymour said it would be proved incontestably that the prisoner now in the dock was not wearing a blue tie when examined before the magistrates.

The prisoner named John Martin was then put forward, and it was noticed that he wore a blue tie.

Mr. Justice BLACKBURN. Now, look at that man and look at the other. Was that man (William Martin) the man whom you say you saw at the van, and whom you now identify? The witness hesitated, and the judge repeated the question.

The witness, pointing to the other prisoner, (John Martin,) said: That is him.

Mr. Justice BLACKBURN. That is the man whom you now identify as the man who took part in the attack?

WITNESS. Yes.

Mr. Justice BLACKBURN. Then you are convinced that the man William Martin, whom you just now said you saw at the van, was not the man whom you actually saw there, and that in saying so you made a mistake?

WITNESS. Yes.

Mr. Justice BLACKBURN. John Martin is the man you meant to swear to, and not the other?

WITNESS. Yes, sir.

Upon all the persons in court this contradiction came by complete surprise. One Martin

had not the least resemblance to the other. William Martin had red, rough hair; John Martin had smooth, brown hair. One was tidy in his dress, and the other the reverse. The witness, however, did not seem much disconcerted by this discovery.

MR. JUSTICE BLACKBURN. The evidence of this witness against William Martin is now disproved. And you will, of course, have the benefit of that fact in your address to the jury, Mr. Seymour.

MR. SEYMOUR. Oh, my lord, more than that, I should hope. It is an awful thought that a man might have lost his life upon such swearing. It really makes one start!

SERGEANT O'BRIEN. Yes, and recklessness of swearing like this is what some local newspapers have commended to the disadvantage of the conscientious, careful testimony of the police. It is shameful, utter, reckless swearing.

GEORGE PICKUP deposed that on the 18th of September he saw men come out of beer-houses and attack the van. Coffey was there; he was among those throwing stones, keeping back the police and the crowd. That was while the hammering was going on.

Cross-examined by MR. SEYMOUR: Was under the arch, knocking about, and trying to prevent others from knocking him about. Swore to Coffey, not from his clothes but from his features. The day after the attack, on the 19th, he saw Coffey go into a hotel, about 500 yards from the spot where Brett was shot. There were three of them together, standing on the side of the road. Witness noticed them for two or three minutes, and then they went into the hotel and witness sent for a constable. Saw also plenty of persons on the road whom he had noticed the day before among the crowd assisting the police. Did not go into the hotel himself; did not swear before the magistrates that he went into the hotel where Coffey was. (Former deposition read: "I did go into a hotel where Coffey was, owned to him in a minute, and sent for the police.") That is correct: I did go into the hotel afterwards, but that was when he was trying to get away. The special constable laughed at me and said, "Nonsense; if the man were one of them he would not be here." I also identified a man named Gleeson, who was afterwards discharged. Did not take any ale myself in that public house.

To MR. JUSTICE MELLOR: Saw Allen and Larkin at the attack. Was quite sure that he saw Larkin as well as Coffey—they were two different men. (There was a striking likeness between Larkin and Coffey.)

CHARLES THOMAS, a painter and glazier, deposed that about five minutes before the van came up twelve or fifteen men came out of the Halfway public house and went towards the arch. Also saw a man run singly in the same direction. Saw Coffey there that day; he came out of the Halfway house with the others. They threw stones at the police. I saw Coffey throw several stones.

Cross-examined by MR. SEYMOUR: Was taken by the police to see if he could identify the prisoner Coffey. The police did not mention his name; they said they had got "a man locked up suspected of being a Fenian."

WILLIAM HUGHES, who had been in the Hyde road on the 18th of September with a friend, a photographer, deposed that he saw Bacon conversing with some men that afternoon; noticed that he had a crutch. They might have been about five minutes together. Some of the men went into the Halfway house; others remained in the road walking up and down, and Bacon was among the latter. Saw probably twenty men in the public house. It might be two hours and a half after this that the van came up. Recognized among the persons attacking it one of those whom he had seen earlier in the day—that man was not now in the dock. Did not see Bacon at or near the place for two hours before the van came up.

Mrs. PENNINGTON, wife of the proprietor of the Halfway house, deposed that in the middle of the day on the 18th of September, between twelve and one o'clock, seven men came into her front shop. Their public house extended completely through the arch. The seven men went out, and some time afterwards about five men came in. Could not speak to their exact number, because they did not give separate orders like the first party. They remained there during dinner time. About three o'clock there might be twenty men in the public house. They all went away together just before the attack on the van. The prisoner, Bacon, was in the house; he came in for the first time after two o'clock. He went in and out. Noticed that he was lame and had a crutch. He said he would set "his horse" on one side. The men were drinking and playing cards. Witness furnished the cards. The young man was not among the prisoners who asked for the cards first. Bacon asked for them the second time. He said he would take a hand at cards with the rest, but could not say whether he did so. When the men went out in a body Bacon went with them. Could not identify anybody else.

Cross-examined by SERGEANT O'BRIEN: Bacon asked her when he came in whether she knew a beer-house keeper named Higgin on the Hyde road, and she said she did not. Bacon had not anything to eat. He had a glass of bitter beer separate from the company, and paid for it.

MARY BRENNAN, one of the females in the interior of the van, deposed that when the door was opened and she was pulled out she saw the prisoner, Brannon, in the crowd. He was in the crowd near the police. Stones came from the crowd where Brannon was standing. Don't know who they were thrown at.

This witness was not cross-examined.

THOMAS HYDE, a boy about twelve years of age, deposed that he saw Brannon at the time

the van was attacked, with a revolver in his hand, pointed towards the driver, crying out, "Stop, or I will blow your brains out." Witness was standing about twenty yards from the railway arch, by the Halfway house. There was a bank of clay on the road at the same side that witness was standing. Brannon was standing on that bank of clay.

Cross-examined by Sergeant O'BRIEN: Brannon was as far away as the clock there, (a distance of fifty feet,) or perhaps further. There was a crowd of men; Brannon was among them. Did mention before that he had seen Brannon with a revolver; it was to two or three boys. (Former deposition read, in which nothing was said as to Brannon's having a revolver.) Brannon did not fire the revolver. I saw another man fire. I could not tell who it was. I know Brannon, because he stood a little further from the men than anybody else. He called up loud. I know he spoke, because I saw his mouth. Had seen Brannon once in custody about six days before I gave my evidence to the magistrate. Before doing so I told Charles Thomas, a witness, what I saw. Did not go to any gentleman and tell him what I knew. A sergeant of police went with me to see the prisoner; did not tell him what I have told to-day. Never told anybody before what I told to-day about seeing Brannon with a revolver. Told my father and mother. Told my mother the day after I had been examined before the magistrates.

Re-examined by Mr. PICKERING, Q. C.: Was not asked questions before the magistrates. Answered the gentlemen examining me.

To Mr. Justice MELLOR: My father is an engine-driver. I know what telling a lie is. Had seen pistols before that day in shops. Knew the difference between that and a revolver.

JOHN HAYES, brick-burner, deposed that he was in the brick-field beside the Hyde road, about five minutes to 4 o'clock on the afternoon of the 18th of September. He was standing 255 yards from the railway arch. Was working in the brick-croft. Left his work and ran to the archway to see what was going on. There were about thirty men round the van. Saw the prisoner Fetherstone among others keeping the officers at bay, and throwing stones both before and after Brett fell out of the van. Saw the last of Fetherstone when he was running away; that was about five minutes after Brett fell out. He went towards the railway along with the other people. Witness went after them for a mile and a half. Saw Larkin taken into custody first, and Allen afterwards. Did not see Fetherstone at that time. Lost sight of him crossing the railway. Saw Coffey at the back of the van. Could not see what he was doing. Stones were being thrown at the time by other people.

Cross-examined by Sergeant O'BRIEN: Two men who work for me, John Burgess and John Carter, were with me that day. They are not here to-day. The witness Pattison was on the wall or close by the wall, I can't say which. Had never seen Fetherstone before. He was about fifteen yards from me then, and his side face toward me. Another time he was only seven yards from me. Saw Coffey in custody, at Albert street. Cannot say whether he was in chains; only looked at his face. There were over twenty with him in the corridor. Did not fix on Fetherstone that day. It was in the court at Bridge street that I fixed upon him on the Thursday after "the persecution" was finished against Allen and the others. Did not see Fetherstone in custody six times; might have seen him three times. Knew him in Albert street the first time, but did not identify him—that is, I did not point him out. I never told anybody meanwhile that I recognized him. I have not told any one yet.

To Judge MELLOR: I did not point him out because I was afraid anything would be done to me. I only pointed out those actually known.

To Sergeant O'BRIEN. I pointed out two persons named Moore and Lynch at Albert street. I cannot say when, or whether it was before I was brought to see Fetherstone.

Sergeant O'BRIEN. I want to know, if fear prevented you from telling anybody about Fetherstone, why it did not prevent you from identifying Moore and Lynch.

WITNESS. I cannot say.

Judge MELLOR. Did you identify Moore and Lynch before you identified Fetherstone?

WITNESS. Yes, my lord.

Judge MELLOR. Why were you not afraid to identify Moore and Lynch?

WITNESS. Because the officers told us not to be afraid, that nothing would be done to us.

Judge MELLOR: If your fears were removed, why were you afraid to identify Fetherstone?

WITNESS. Well, it might have been before; I did not think about it.

Judge MELLOR. I wish you to be careful, witness; this is a serious matter.

Cross-examination continued: I was taken or told by the police each time to go and see prisoners who had been arrested. Moore and Lynch were discharged.

Cross-examined by Mr. DIGBY SEYMOUR: After his fears were removed, witness mentioned all the names he knew. Did not mention Coffey's. Had not mentioned or identified him until to-day. Only saw him for the first time to-day since the attack. Had not read the Manchester newspapers and seen his name there.

Mr. SEYMOUR. Do you mean to say you did not read the newspaper reports?

WITNESS. No; but I knew what was going on. I was taken in all to see prisoners three times, and once before the magistrates.

Mr. SEYMOUR. And you never mentioned Coffey's name on any occasion?

WITNESS. This is the first time I have seen him since he was given in charge. I knew Pickup. I knew he was to speak to Coffey being there. On the 19th of September I was

with him in the Junction Inn. The prisoner Coffey and Pickup had some rough words together in the Junction Inn about the Exchange. The prisoner Coffey said that Pickup was a mean fellow if he meant to say that he had anything to do with Fenianism; that he got his living by his work. Did not hear anything said about its being "a hot place for Irishmen." They were quarrelling together for some time, and had high words. They were quarrelling while the policeman was sent for. The policeman who came first was not a regular constable; he made light of the charge, and would not take Coffey into custody.

Re-examined by the ATTORNEY GENERAL: The altercation took place at the vault door. It began by Coffey asking "where the Exchange was," and Pickup said he knew well enough. The special constable came up in about ten minutes, and the regular constable in about five minutes after that.

To Judge MELLOR: The fact that I could speak to Coffey was not told by me to the solicitor for the Crown, or anybody.

Judge MELLOR. Why not, when you say your fears were removed?—I never did. I did not want to. I don't know why, but I never did.

Judge MELLOR. Are you quite sure he is the man, now?—Yes, sir.

Judge MELLOR. It is very extraordinary that you should not have done so before. Can you give any reason?

WITNESS. I can't say that I saw him at all before, sir. I have been out of town. I can't say whether I have seen him since the arrest or not. I can't say whether I saw him in the prison or not.

To Mr. Justice BLACKBURN: Nobody came to ask me what evidence I could give about Coffey. I knew he was taken on the 19th. When taken to the police office to identify other prisoners I did not say anything about Coffey. I did not know that I had anything to do with it.

WILLIAM BATLY identified the prisoner Fetherstone as having thrown a very large stone at the back of the van before Brett came out.

Cross-examined: The back of Fetherstone must have been towards him when he threw the stone. He wore a cap with a peak.

Mrs. ALLEY, wife of the landlord of the Railway Inn, deposed that on the 18th of September a number of men with strange faces that she had never seen before came to her house. Saw strange men loitering about. I went on my own business. I was busy baking that day. The company in my house went to the other side of the way about four minutes before the attack on the van, and the men who had been loitering about went with them. Identifies Bacon as among the men; he came out of the Halfway House.

Cross-examined by Mr. Sergeant O'BRIEN: I did not notice anything particular about him; he purchased something at a fruiterer's opposite. That was after the attack began. A man and a woman keep the stall. I think it was the woman who was there then.

To Mr. Justice BLACKBURN: Bacon did not go with the other men; he stood at the stall by himself. The fruit stall is at the Manchester side of the arch.

The evidence given in the previous trial as to the warrant under which Kelly and Deasy were committed to jail was repeated.

Inspector WILLIAMSON, of Scotland yard, repeated his statement on the subject. The police officers who arrested Kelly and Deasy also gave their former account of the circumstances under which they were apprehended.

The case for the Crown being concluded, their lordships asked if there was sufficient evidence against Bacon (the lame man) to go to the jury.

The attorney general being of opinion that there was not,

Mr. Justice Blackburn said he should direct his acquittal when the proper time arrived.

His lordship also asked the counsel for the defence whether they thought it desirable to put to the jury the question whether the warrant against Kelly and Deasy was duly executed.

Mr. Sergeant O'Brien said it had several times occurred to him that the jury should be asked whether there was a warrant on the 18th or not.

Mr. Justice BLACKBURN. Then I shall put it to the jury whether there was a warrant on the 18th, which was afterwards torn up, and whether it had been made out as was sworn.

Mr. SEYMOUR rose at 3 o'clock to address the jury for the defence of Martin, Nugent, and Coffey. He said that, apart from the personal sense of heavy responsibility in their behalf, he regretted all the more that he had to appear for them on the charge that was preferred, because he confessed he thought that justice had been sufficiently vindicated when five lives were already forfeited for the constructive murder of one individual. If he felt anxious when he addressed the jury in the previous trial, his anxiety now was twofold greater. The excitement and labor imposed upon the physical, as well as the mental, powers, from the position he had held in this case, were of a kind that could not be estimated by any one who had not filled the same position, and been sitting from nine in the morning till a late hour in the evening watching a case which affected the life of several of his fellow-men. Just as he rose he had sustained a shock of a more personal nature. Three days ago, when he was about to summon every power he possessed for the address he had to make to the jury in the other trial, he heard the news that one whom he had known well, a member of the bar, had gone to his last account, and now he had the telegraphed intelligence that a more brilliant professional star had set. [The learned counsel was understood to allude to the death of Mr.

James, Q. C., and M. P. for Manchester, which had been announced in the Manchester Courier.] After giving further expression to the feelings which these events must naturally inspire, the learned counsel proceeded to comment more immediately upon the character of the case against his clients. He said he would treat it substantially as one of identity, and he assumed that he should be able to satisfy the jury not only that the case for the Crown was weak, but that the case for the defence was strong. He repeated the caution that was addressed to the jury in the previous case, not to allow themselves to be influenced as against particular prisoners by the weight of testimony against others who were associated with them in these trials. He would warn them particularly against attaching too much importance to evidence of inexperienced youths, however intelligent, like the boys Patterson, Mulholland, and Aconley. He represented the improbability that Patterson should have remained motionless looking on at the fray, as he had said, although so many shots were being fired close by him. It was more reasonable to suppose he would move into some less exposed place of observation. Then it was not dealing fair play to a man in the position of Martin that he should be subject to identification at the police station while he was chained to another. It was known by one of the witnesses who identified him that "a red-whiskered man" had been apprehended. The learned counsel commented on the evidence of Kate Reilly as one of startling absurdity. Her story that Martin had taken her word that she would stand still if he would spare her life, and that she remained standing still after he had left her, was the sort of fiction that might be expected from a reader of the London Journal, an attendant at penny theatres, and a convicted felon. He then indicated the nature of the evidence he should call to prove that Martin was a married man of respectability, who had no connection with Fenianism, and whose employers would speak in his behalf.

At the time our report was despatched, shortly before five, Mr. Seymour was proceeding to review in its turn the evidence against Nugent.

[From the London Times, November 5, 1867.—Editorial.]

There is one incident of the Fenian trials at Manchester and Dublin which deserves special consideration. It is the fact that several of the prisoners claimed the privileges of American citizenship and the interference of Mr. Adams as the representative of their adopted government. After the verdict had been returned against him, and before sentence had been pronounced, Gould stated that he was a citizen of the United States of America, and if Charles Francis Adams had done his duty towards him, as he was paid for doing, he would not be in that dock answering the questions. Shore declared that, "as an American citizen, he had of course expected to receive the protection of the ambassador of his own government." Warren, on being indicted before the commission court at Dublin, applied through his counsel for a jury composed in part of American citizens, on the ground that his allegiance had been transferred to the United States. The lord chief baron rejected the application promptly and decisively, "the law of England being clear, and administered without variation from the earliest times—that the man who was once a British subject, as the prisoner admitted that he was, remained so forever." Warren thereupon protested against being arraigned, tried, or judged by any British subject, instructed his counsel to withdraw from the case, and added: "I now place it in the hands of the United States, which has now become the principal." Though cautioned by the court, he adhered to this resolution, and a gentleman presently appeared to watch the proceedings on behalf of the United States consul. The chief baron very properly declined to allow so irregular a course, but treated the prisoner with great consideration, and took care that his cause should not suffer for want of professional advocacy. He was convicted, however; and one of our Irish contemporaries, in commenting upon the case, has thought fit to impugn the decision of the lord chief baron on the legal question, whether he was entitled to "ignore the jurisdiction of the court," or to claim a *jury de medietate*, as a foreigner. Upon the spirit and intent of the article headed "Only an American citizen," in which this point is urged, we forbear to make any remark, but the point itself is one of real importance, and calculated to mislead unlearned persons, unless placed in its true light. The writer maintains that, if the chief baron's ruling be sustained, "George Washington, Franklin, and all the other early heroes of independence, remained to the last days of their lives subjects of Great Britain"—"impenitent rebels"—"at any time liable to be hung by the neck, if caught, and not entitled to the rights of prisoners of war." "The question is," as he states it, "whether an American citizen has any right to the privilege accorded by law to every other alien," and, in particular, to that of being tried by a jury half composed of aliens; and upon this question, as he represents, "the two countries are now face to face." We have yet to learn the authority for this last assertion, if it be meant that any claim of this kind has been preferred or sanctioned by the government of the United States. Its validity, however, does not depend on whether it has been pressed or not, and admits of being determined on principles which are well ascertained.

Very few propositions of international law are better established or more familiar than the axiom, that a natural-born subject cannot transfer his allegiance from one sovereign to another at pleasure. How far he may be enabled to do so by the laws of his native or of his

adopted country cannot be laid down with equal precision, inasmuch as there is no definite and comprehensive maxim on the subject universally adopted by the municipal legislation of all civilized countries. But no doubt whatever exists as to the doctrine of our own law, which is here identical with that of the United States. In the words of Lord Stowell, a person born in England, but naturalized in a foreign state, "is subject to all the obligations imposed on him by his nativity. He cannot shake off his allegiance to his native country or divest himself altogether of his British character by a voluntary transfer of himself to another country," even for the purpose of trading in contraband goods with an enemy of Great Britain. In the words of Chancellor Kent, "from an historical review of the principal decisions in the federal courts, the better opinion would seem to be that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law, and that, as there is no existing regulation on the case, the rule of the English common law remains unaltered." General Halleck, one of the highest and latest American authorities on international law, fully embraces the consequences of this rule, and, as he observes, even those writers who are in favor of limiting it, allow that "the renunciation of nationality does not release him who avails himself of it from any of the obligations which he owes either to his country or to his countrymen, nor can it ever be appealed to as a mask to cover crime." Mr. Webster, in one instance, went still further, and granted that France, which, like England and the United States, does not permit her citizens to renounce their allegiance, might lawfully claim the services of a Frenchman naturalized in America, "when found within French jurisdiction." The resistance of the United States to the impressment of naturalized seamen by Great Britain in the early part of this century is in no degree inconsistent with this position, since it was founded not on a denial of our right to claim their services, but on a denial of our right to enforce that claim by search. Indeed, whatever differences may be found in the codes of different nations with respect to the power of citizens to shake off the duties with the privileges of allegiance, we believe the annals of criminal justice may be searched in vain for a precedent in favor of the right asserted by our contemporary—that is, the right of a natural-born subject, indicted for treason or murder in this country, to plead naturalization in America, and to be tried, if at all, as an alien. It was assuredly not for the benefit of persons thus circumstanced that Edward I allowed foreign merchants, presumed to be ignorant of our language, the doubtful advantage of a mixed jury, coupled, as history tells us, with the hardship of a mutual liability for each other's crimes. It is, perhaps, scarcely worth while to consider how a court of law would have dealt with Franklin or Washington had they been indicted as "impenitent rebels" after the war of independence. Suffice it to say that, for obvious reasons, affirmed and explained in a memorable judgment on this very subject, all ties of natural allegiance are severed by a treaty of peace wherein the Crown expressly relinquishes its authority over a seceding colony.

The moral aspect of the claims so presumptuously advanced is too clear to admit of a moment's doubt. If there be one class of Fenian conspirators rather than another which deserves no mercy at the hands of the government, it is the class of American filibusters who have long infested Dublin, and are beginning to infest our own great cities. It is possible to feel some compassion for the silly Irish youths who are first seduced into playing at sedition, and then led on by appeals to their pride and their fears into overt acts of treason. It is even possible to feel compassion for an educated Irishman who becomes a Fenian with his eyes open, taking his life in his hand, under the influence of a patriotic hallucination. For the restless adventurers whom the close of the American war has let loose upon the world, and who fancy they can here perpetrate with impunity deeds for which they would be hanged at home, with or without law, we can feel no compassion at all, on whichever side of the Atlantic they may have been born. There were peculiar reasons which justified the government in sparing more than one of them on a former occasion, but those reasons exist no longer. We must deal with them as the government whose protection they invoke would deal with ruffians guilty of like outrages in the streets of New York. They have already had fair warning, and they may be assured that if they should fall into the hands of justice no American minister will intercede for them, and no English minister will venture to relieve them.

As the report of the trials at Manchester, as published in the London Times, was not officially communicated to the Department of State by Mr. Adams after the 5th of November, the continuation of that report is added, in order that the history of the trials may be presented as recorded in that journal.

[From the London Times, November 6, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Tuesday*.

Mr. Seymour finished his address yesterday evening on behalf of the prisoner William Martin by observing that it was not out of men so respectable in position as he would be

shown to be by the witnesses that the wild and giddy dupes of a wicked conspiracy were made. The Fenians took the idle, the frivolous, and the young. They talked over the woes of Ireland, they spoke of the history of the Fenians, and they committed a great absurdity in that, for never was a name more misapplied. The Fenians were once, in the 6th century, a royal militia in support of the throne and the constitution; now they were traduced to give the color of their name to a republican farce. But it was not from the men who had their homes, their wives, and their children depending upon them that Fenian recruits were found in Manchester or elsewhere. Martin wished him to tell the jury that he was never thinking of that with which he was charged; that if he were now sentenced he would leave the world, not crying "God save Ireland," but "God save her most gracious Majesty the Queen." The taint of Fenianism had never poisoned his loyalty. He had never associated with Fenians, never attended their public gatherings, and was incapable of the atrocity laid to his charge by the prosecution. That would be enough if it were proved, but he would prove more. On the 18th of September the sister-in-law of the prisoner Martin received from the wife of the chief carpenter at the Prince's theatre, Manchester, a ticket to admit two to the theatre on the night of the 18th of September; and he was asked to go in the course of the day on the message from the wife to the husband, speaking of this ticket which had come in, and requesting the brother, who was working in Clayton, to join them at the theatre. Referring next to the case of Nugent, the learned counsel analyzed the evidence, and remarked upon its inconclusive character as against him. He submitted that, though there were persons who concurred in speaking to Nugent, yet they did not quite agree as to any one positive and characteristic act which would enable them to be relied upon. In regard to Coffey, he enlarged upon the striking resemblance between him and the prisoner Larkin, and suggested the possibility that those witnesses who had sworn to Coffey's being present might really be referring to Larkin. The openness of Coffey's conduct, and the fact of his being in a public house near the spot, on the night of the occurrence, exposing himself to notice, were relied on as facts inconsistent with the supposition of his guilt. With regard to Nugent, witnesses would be called who were loyal Englishmen, and who would swear to Nugent's having been engaged at his regular occupation at the time he was alleged to have been taking part in this outrage. He would also be able to prove a complete *alibi* on behalf of Coffey, and to show that on the very evening of this occurrence Coffey was present at a meeting of a savings society with which he was connected, and paid in his weekly contribution. Before sitting down he asked the jury, so far as in them lay, to strive to the utmost of their power so to individualize the cases of the respective prisoners as to be satisfied regarding each before coming to a conclusion. The moral effect of the trial of last week must be great, and it must carry terror where it ought. It must go forth to the world that if deeds of violence were done in England, English justice was sure and swift, and that judgment and sentence followed the detection of crime. He had never shrunk from boldly avowing his own opinions. But five men were now awaiting their doom. Great as was the moral effect of that conviction, infinitely greater would be the moral force of this acquittal; for just in proportion as charity was more lovely than power, and mercy was more beautiful than justice, just in that proportion would the verdict that established these men's innocence be received with more respect in the eye of the country than the verdict that pronounced the other men's doom.

The witnesses were then called on behalf of William Martin.

The first was Mrs. KIRKBY, with whom he lodged, and whose daughter Eliza was married to his brother, the prisoner John Martin. Mrs. Kirkby deposed that on the forenoon of the day of the outrage an order to admit two persons to the theatre was brought to her house by Mr. Breckell, the head carpenter of the theatre. William Martin was sent by Eliza in the afternoon to fetch John from his work at Clayton, in order that they might go to the play. William went out at twenty minutes past four on this errand. The house is in Bailey street, Oldham road, about a couple of miles from the scene of the outrage. In cross-examination, the witness said John Martin had been in the First King's dragoons, and was discharged from Colchester. After being a soldier he had gone back to his old trade of coopering, and had been regularly at work for Messrs. Foxton and Mather after marrying Eliza Kirkby—five weeks before the outrage.

Re-examined by Mr. SEYMOUR: The witness said she looked at the clock when William went out at 4.20, because he asked how long it would take him to go to Clayton. The witness had also stated that during the morning William Martin had been to the news-room to look at the papers for advertisements of situations, and had brought home a book from the library. (The book was produced; it was the Diary of Miss Kitty Trevelyan, and on the inside of the cover was a ticket showing that it had been issued on the day in question.) In answer to questions on this head, put by Mr. Justice Mellor, the witness said William Martin was learning to write shorthand. The witness said she had in her possession John Martin's medals.

Mr. Justice BLACKBURN. That don't affect William Martin's case.

Mr. SEYMOUR. No, my lord, but I have my own notion about Fenians. They are not brave, loyal men.

EDWARD FERDINAND BOEHM, wholesale picture-frame maker, &c., said William Martin had been in his employment from July 30 to August 9. He was engaged to get orders, but in

this he did not succeed, as he did not understand the business. While in witness's employment, William Martin had found two sureties, one of which was for £50.

WILLIAM BAILEY, of the firm of Bailey & Co., accountants, said William Martin was negotiating with them for a situation at the time of the outrage, and was to have called to see them the morning after it occurred to settle the matter. If engaged, he would have had a salary and commission.

ELIZA MARTIN, the wife of John Martin, confirmed the evidence of her mother in every particular, and said the book that William brought home was one that she had asked him to get from the library if possible. They were all having tea when William started to Clayton.

JANE FARREL, who called at Mrs. Kirkby's house during the afternoon, said she remembered seeing William Martin reading a book all the time she was there, from 2 o'clock till 3.

The wife of the carpenter at the theatre confirmed the statement about the theatre ticket.

The court was then adjourned.

This morning the six prisoners were again placed in the dock. Their names are William Martin, John Francis Nugent, Patrick Coffey, John Bacon, (against whom the charge has been withdrawn,) John Brennan, and John Fetherstone.

Mr. Justice Blackburn, on taking his seat, at once addressed the counsel for the defence respecting the possibility of holding two courts, not now, but at a future stage of the trial. It was unnecessary for two judges to remain in the court, and very undesirable to double the length of the commission. He did not ask for an answer at the moment.

Mr. Seymour promised to consider the matter as to what course he ought to take under all the circumstances, and inform his lordship at the earliest opportunity.

The witnesses first examined were two women and a girl, who were at a house in Great George street on the afternoon of the 18th, and whose evidence went to show that William Martin called there on his way to Clayton to ask the way, and was shown it by the little girl, who went with him up Hulme-hall lane.

Some time was occupied by the judges, jury, and counsel, in discovering upon the map of Manchester the localities indicated by the witnesses.

WILLIAM WILD, senior assistant at the free library in Livesey street, deposed that the library book was issued by him on the 15th September.

Mr. Justice BLACKBURN. Do you remember who got the book on that day?

WITNESS. No.

Mr. Justice MELLOR. You do not know whether it was a man or a woman?

WITNESS. No.

In answer to further questions from the bench, witness stated that there were often between 300 and 400 visitors to the library in one day, so that the prisoner Martin might have been there unobserved.

Mr. Justice BLACKBURN. Look at the prisoners. Have you ever seen any of them in the free library?

Witness (after looking at the prisoners:) Yes. The one in the corner (Martin.) I have seen him there at different times.

Mr. Seymour observed that as John Martin was a prisoner upon another charge he would call him if it would be more satisfactory, but as John Martin's position was peculiar he hesitated to call him upon his own responsibility.

Mr. Justice Blackburn said that John Martin, not being included in the same indictment, was clearly an admissible witness, as a matter of law, but his position would cause strong observations to be made.

Mr. Justice BLACKBURN. If you tender him, he must be admitted as a witness. The wife has been called. From John Martin's position it is evident that unless the jury believe it without him, they would not believe it with him.

Mr. SEYMOUR. That is my feeling, my lord. If the slightest intimation be given that it would be more satisfactory, I will call him; otherwise, his position is so peculiar, I will not do so.

SAMUEL MATHER, examined by Mr. SEYMOUR, said: I am a cooper at Claydon. I recollect the day of the outrage. On that day John Martin was working for me.

By the ATTORNEY GENERAL. From ten minutes past 12 to 20 minutes past 6 he was under my eye.

The learned judge intimated that there was no necessity for further evidence as to John Martin, as the only object of such evidence at present was simply to show that he had been at work on that day, in order to corroborate the fact of the message being sent.

Mr. Seymour then proceeded to call witnesses for Nugent.

WILLIAM SAUNDERS said: I am a plasterer in Lime street. I know Nugent by working with him. He is a joiner. I saw Nugent in Buckley street on the 18th from half-past 3 to ten minutes past 4. He was working at the carpenters' bench repairing an old window-sash belonging to Mr. Hadfield, pawnbroker. I spoke to him.

By the ATTORNEY GENERAL. I work for Mr. Hadfield, pawnbroker, who is an owner of property. I was looking for work on the 18th. I had worked for Mr. Hadfield the Saturday previous. The place where I saw Nugent was a shop newly built by Mr. Hadfield. I saw Nugent from half past three to ten minutes past four. I was with him all that time.

JAMES ASH. I am a tailor, living in Burton street. I saw Nugent on the 18th of Septem-

ber, in the workshop in Burton street. I saw him particularly at half past three o'clock for two minutes and a half. I saw him again about twenty-five minutes later, at ten minutes to four. I had never spoken to him before. I saw him again at a quarter past five, standing at the door of the workshop.

Cross-examined by the ATTORNEY GENERAL: I was indoors working, but when I saw him I was in the street, and saw Nugent speaking to a man at half past three. I heard of Nugent being taken up from the father.

JOHN SMITH, laborer, saw Nugent on the 18th of September in a shop with his father in Burton street up to ten minutes to four. He was never out of his sight from then to five.

By Mr. Justice BLACKBURN: How do you know these hours?

WITNESS. I asked him what time it was; he was the only person who had a watch.

By the ATTORNEY GENERAL: Nugent came from the shop when he went towards his father's shop. We were arguing on a barrow of cinders. There was a dispute about the weight. I was going down with another barrow of cinders when I saw him at ten minutes to four. At ten minutes to four I had asked him what time it was. I asked him what time it was every time I saw him. I might have asked him more than twenty times.

By Mr. Justice MELLOR: Other men kept going in and out. Saunders was there. Nugent was not in the shop at half past two nor half past three. At that time he and his father went down to Dr. Bedale's, in Miller street. The first time he worked in the shop was after we talked about the barrow of cinders, and when he looked at his watch and said it was twenty minutes to four. He had been working all the day.

HENRY HADFIELD examined by Mr. SEYMOUR, said he was the son of Mr. Hadfield, who was building new houses in Burton street, and superintended the work for his father. He knew both the prisoner Nugent and Nugent's father; they had been in their employ constantly since last Christmas. On the day that Brett was shot witness was with the Nugents at half past one until ten minutes past two, in Rochdale road; they were then going down to Dr. Bedale's new building in Miller street. The Nugents were joiners. Witness knew the time because he was in the habit of going out while their shop was closed, which was from one until two. They had a pawnbroker's shop. The Nugents were doing the joiners' work at the houses.

Examined by the ATTORNEY GENERAL: The Nugents were working at the houses in Burton street on that day. Saunders, the plasterer, was there at the time.

Re-examined by Mr. SEYMOUR: It was a contract job, and he could not, therefore, produce any time-keeper or pay-sheet.

JAMES MILLER, examined by Mr. SEYMOUR, deposed that he remembered the 18th of September. He was carter at the time to Mr. Hadfield, and was filling his cart with broken bricks. He saw Nugent at one o'clock at work in the joiners' shop. At two o'clock Nugent went away, and came back at three o'clock. Nugent said he was going to Dr. Bedale's. Witness was jumping, and he challenged Nugent to jump for a quart of ale; they did so, and jumped up to half past three. Never lost sight of him up to half past five. Henry Hammett was leading the horse in the cart he was filling.

HENRY HAMMETT, laborer, saw Nugent on the 18th of September, in Burton street, at a quarter past three. Nugent was then standing outside the shop-door, looking at some young men jumping. One of the jumpers was James Miller. Saw Nugent next at half-past three. He was then inside the shop-door, looking at the work he was about to commence. Had his eye upon him till twenty minutes past four. During that time Nugent was working in the shop.

Cross-examined by the ATTORNEY GENERAL: Knew the time by hearing a clock chime.

RICHARD PURCELL remembered the 18th of September. Knew the prisoner Nugent. Saw him at Hadfield's works, in Burton street, on that day. Was there all day, excepting the dinner hour. Was helping Nugent's brother to lay flooring boards. Remained there until half-past five. The prisoner went out with his father about twenty minutes past two, and returned at three. He (Nugent) had his hat on when he went out. Did not lose sight of him at any other time excepting for a few minutes.

GEORGE CUNNINGHAM, a sailor, who lived at sixty-one Burton street, opposite the new shops, about ten yards off, remembered the 18th of September. Knew the prisoner Nugent. Saw him on that day in the workshop in Burton street at half-past three, when he was talking with a man in the shop, with a tool in his hand. Noticed his own clock at the time, as he was going towards the door. Next saw Nugent at five o'clock.

Cross-examined by the ATTORNEY GENERAL: The witness Ash lived with me and worked for me, and was the person who put the heated iron out in the clay to cool.

ROBERT GARBUTT, a shoemaker in Alexandra street, saw Nugent and his father working at the new houses, and asked him how they were going on with the job.

Cross-examined by the ATTORNEY GENERAL: Had made shoes for Nugent.

ELIZABETH MASSEY, wife of James Massey, millwright, lived at sixty-four Buckley street, next door but one to where Nugent lived. Remember the 18th of September perfectly well. Saw Nugent at his own door on that day. Asked him what time it was. He took out his watch and replied that it was ten minutes past four. Saw him again a few minutes after six.

Cross-examined: Had never spoken to him before or since. Saw him frequently. Had

no clock of her own, and went out purposely to ask the time, and Nugent was the only person about at the time.

ROBERT NUGENT, father of the prisoner, said: I have only worked for Mr. Hadfield. I commenced working that morning at six o'clock, and my son worked at the same bench. We were fitting in sashes and laying floors. We came back to the job in Barlow street at about a quarter or twenty minutes past three. I worked up to six o'clock, and my son worked to within a few minutes of the same time. My son had a watch, which he was wearing that day.

By **Mr. Justice MELLOR**: He staid at work all the afternoon after leaving Dr. Bedale, and was in my sight till twenty minutes to six.

[A map was produced in the court and shown to the jury, and it was ascertained the distance from Buckley street to the Hyde-road arch was two miles.]

MICHAEL FLYNN, a working smith, living in Burton's buildings, about fifty yards from Mr. Hadfield's buildings, remembered seeing Nugent on that day, when he took him a piece of iron back about a quarter to four.

Cross-examined by the **ATTORNEY GENERAL**: I took it to the door of the shop where the joiner's bench was.

JOHN BOYLE said between the hours of three and four he saw Nugent at his job. He was passing witness, who was painting some windows, and asked him to come and unfasten a window, because the weights would not work. He refused to do it, and said his father would say the same.

SAMUEL SPOONER, of Burton's buildings, saw Nugent on the 18th, between three and four o'clock, going to his work.

MARY BURNS saw Nugent at ten minutes to four on the 18th, close to his own house.

JAMES BUTLER saw Nugent on that day between twenty minutes and a quarter to four, and between half-past four and five, at the same place, and saw a smith fetching a bar of iron close upon four o'clock.

Witnesses were then called for Coffey.

DAVID WILLIAMS said: I live in Lyceum place, All Saints'. I saw Coffey on the 18th of September in Jackson street, Hulme, at half-past three. I was talking to him for a quarter of an hour.

Cross-examined by the **ATTORNEY GENERAL**: I have seen prisoner three times previously, but had not seen him for a month previous to the 18th of September. Coffey said he had been working on the 18th for a man named Davis, of Pendleton.

By **Mr. Justice MELLOR**: I know the time, because there is a large clock in the Chester-road. He told me he was not working—that the joiners could not work because the brick-setters were "idle" that day. The place where I saw Coffey is two and a half miles to the railway arch.

PETER POWELL, clerk to the co-operative stores, Downing street, said Patrick Coffey was a member of that store. He became a member in August last. His first subscription was payable on the 18th of September. That was the last day for taking in checks. Received a subscription from him on that day. He came on that day between six and seven o'clock. He paid 3s., which witness made an entry of in the book.

Cross-examined by the **ATTORNEY GENERAL**: It was about ten minutes' walk from the Hyde-road arch.

ROE PARKER, manager of the drapery department of the co-operative stores, Downing street, saw Coffey on the day of the outrage between six and seven, standing at the shop window. Witness said to him, "Is Kelly captured?" Coffey said he knew nothing about it. He appeared surprised about it. He was quite surprised, and no affectation about it. Witness changed 4l. of checks for him.

By **Mr. Justice MELLOR**: I have known him three or four months. I should think he would be the last man to commit a breach of the peace.

The **ATTORNEY GENERAL**: I suppose you would be surprised at any man belonging to a co-operative store committing a breach of the peace?—I don't know. He was the last man I should have thought to have done such a thing.

Cross-examination resumed: Balls have been held at the rooms. I never knew one held in the long room in aid of the funds of the Fenians. I have nothing to do with the office.

Have you heard of any such things?—I have heard since.

When?—Since the attack.

Tell me plainly what have you heard?—I have heard that Fenians were about.

What do you mean?—I have heard Fenians were there.

At the ball!—Yes.

Examination resumed: I do not remember any one else coming with Coffey.

By **Mr. SEYMOUR**: The room is let for different purposes. Mr. Hughes, M. P. for Lambeth, and Lord Shaftesbury have lectured there.

PETER POWELL, recalled, said Coffey lived in Bonsall street, Hulme.

EDWARD DAVIS, a master joiner, said: I have been subpoenaed by the prosecution. Coffey worked for me till dinner time—12 o'clock. There was nothing for him to do in the afternoon. He had been working in the forenoon at Pendleton. I told him to come to my shop in Ellor street, Pendleton, because work was slack. He did come, about twenty minutes

after one. The last time I saw him was at half-past one. He came prepared to work, but there was no work for him.

By the ATTORNEY GENERAL: It was not on account of the bricksetters he could not work. I told him I had no further work for him till the next day.

By Mr. Justice MELLOR: He did not know there was no work for him till he came back to the shop.

Cross-examination resumed: I know a man named McDermot. McDermot called on me, but did not show me this letter (a letter was handed to the witness by the attorney general.)

By Mr. Justice MELLOR: My workshop is four miles from Hyde-road arch.

By Mr. SEYMOUR: He was a man of regular habits.

This closed the defence for Mr. Seymour's clients.

Mr. Sergeant O'BRIEN addressed the jury at considerable length on behalf of Brannon and Fetherstone. He first drew attention to the unsatisfactory nature of the evidence that Kelly and Deasy had been committed to Brett's custody under a warrant. Leaving the legal part of the question, he said he entered on his task of reviewing the evidence against his clients with considerable distrust, not on account of the nature of the case he had to encounter, but because the events of the last few days had impressed upon his mind still deeper than ever that prejudice unseen, unknown, might have unconsciously operated to prevent men from seeing clearly the point at issue. It was possible for men to engage in an affray without contemplating the sad consequences which might follow in the heat of passion or the excitement of the moment. With regard to the testimony against his clients, that relating to Brannon was principally the evidence of boys and frightened women. Not a single policeman identified him. The learned counsel said he had never seen anything more honorable or scrupulous than the evidence of the police of Manchester in these trials. The evidence against Fetherstone was almost confined to the witness Healey, who, it must be remembered, had previously, before the magistrates, identified two men named Moore and Lynch, whom the bench were compelled to discharge.

The learned counsel was calling witnesses to prove an *alibi* for Brannon when our reporter left.

[From the London Times, November 7, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Wednesday.*

After the despatch of our report yesterday evening the remainder of the time was occupied with the hearing of evidence of *alibi* on the part of Brennan.

ELIZABETH HEALEY, seamstress, said: I have known Brennan three years. I saw him on the afternoon of the 18th, about 4 o'clock, when I was going for some cream in Angel street, Rochdale road, and again at half past 4, and I was in company with him until five minutes to 5. I was called into the George inn, and saw him there. I had a glass of porter with him.

Cross-examined by the ATTORNEY GENERAL: Brennan was taken in custody on the 19th. I am not aware I am going to be his wife; he never proposed such a thing to me.

PATRICK M'TIGHE said: I am a tailor, and have known Brennan four years. I saw him in Swan street on the afternoon of the 18th, at half past 1. I saw him passing M'Kenna's vaults. I kept his company for some time, and we went to Crompton's vaults. We played cards there close upon an hour. We went to Smithfield market and remained twenty minutes or half an hour. We then went to the Crown and Kettle, and remained there while we had some biscuits and porter. We loitered about the streets, and went to the George inn when the last witness came in.

By the ATTORNEY GENERAL: I work for Shirley, Market street.

BRIDGET MANNING, of 66 Addington street, said: My husband works at the Manchester gas works. I have known Brennan six months. I saw him at a quarter to 4 on the afternoon of the 18th of September, when I went into the Gaping Goose.

WILLIAM BRECKEN, barman of the George inn, said: I saw Brennan at our vaults between a quarter and half past 4. Mary Healey also came in. The witness Healey made inquiry of me.

No witnesses were called for Fetherstone.

Mr. Sergeant O'Brien briefly summed up the case for his clients.

Mr. Seymour also reviewed the case for his clients, and urged upon the notice of the jury the strong contrast between the evidence for the defence and the Crown in respect of Martin. He reviewed the events of the pursuit, Martin's arrest at the bridge, his position there when he was apprehended, his remarks when taken into custody, and the confusion between John and William Martin, all of which tended to cause them to look with disfavor on the evidence of identity. The distance between Mrs. Kirkby's house and Bradford Lane bridge must be taken into consideration. There was no doubt that John Martin was at work that day, and yet he was awaiting his trial for murder. John Martin had married Mrs. Kirkby's daughter, and he put it to the jury whether a man who had so recently taken a wife home would be likely to join in an insurrectionary movement, and thus strike a blow at all their prospects

of domestic happiness. He asked the jury not to weigh little discrepancies, but to consider general and substantial agreement. He repeated his former argument—that there were no concurrent testimonies to fix these deeds upon the Martins. No papers were found, and no taint of Fenianism rested upon them; the only question was one of identity. He anticipated the objection which might be made as to some of the *alibis*, that they were not called before the magistrates, and he urged that the objection would tell two ways, and if the evidence of these witnesses for the defence was not to be credited because it was not called before, the same remark would apply to new evidence for the prosecution. He analyzed the evidence of each witness as it bore upon the different prisoners. In reference to Coffey he showed that, according to the testimony of his master, he came back to work that afternoon, not expecting but that he would be able to resume work. This, the learned counsel argued, did not appear to bear out the suggestion that he was in concert with the others in the unlawful undertaking. He also pointed out that the fact of Coffey's going to the co-operative stores in Ardwick was a presumptive sign that he was not at the affray.

Dr. BEDALE, who had been previously referred to in the evidence, but was prevented from attending earlier, was here called on behalf of Nugent. He said on the 18th of September he saw Nugent and his father from half past 2 to a quarter past 3. He was having estimates prepared. The Nugents came to him, wishing an answer as to whether he would let them the carpenter work.

By the ATTORNEY GENERAL: I did in the first instance say that I did not think it was that day, but subsequent reflection and consideration convinced me it was on that day.

The court rose at 6.20, and adjourned to this morning at 9.

This morning the trial of the prisoners William Martin, John Francis Nugent, Patrick Coffey, John Brennan, and John Fetherstone, was resumed before Mr. Justice Blackburn and Mr. Justice Mellor. John Bacon, the sixth prisoner, against whom the charge had been withdrawn, was also in the dock, his discharge not having yet been formally directed.

The ATTORNEY GENERAL made his reply upon the whole case. After having recapitulated the circumstances connected with the capture, he addressed himself to the legal point raised by the learned counsel for the defence. Sergeant O'Brien, in the course of his address, raised a point to his (the attorney general's) surprise, as to whether any warrant had been made out at all. He was surprised, because he had told his learned friend that any witness they wanted to strengthen the case should be brought forward, and when he was prepared to trace the history of the warrant of remand, and call before them two persons to clear up the matter, it was intimated that no point was to be raised.

Mr. Sergeant O'Brien said he did not say so.

Mr. Justice BLACKBURN. If the counsel remained silent when the witness was tendered it was all the same.

The Attorney General resumed. He said the universal practice was when a prisoner was sent from the magistrates to Bellevue jail on a remand, the warrant was sent to the governor to take the prisoner into custody, and without such warrant the governor of the jail would not receive him. It was beyond all doubt that, on the 18th, the day the prisoners were remanded, there had been a combination of—he had avoided the use of the term hitherto—a number of persons engaged in that foolish and desperate Fenian conspiracy to rescue Kelly and Deasy, and arrangements were made for the purpose of carrying this design into execution. If the jury found men with pistols loaded for the purpose of effecting what must be a dangerous enterprise, and if they found these pistols used against the policemen, there could be no doubt that all were engaged in the common design of rescuing Kelly and Deasy; to rescue them by any means necessary—by the fatal use of their fire-arms, if no other means were successful. The attorney general then referred to the statement made by Mr. Seymour, that justice might have been satisfied by the convictions already obtained. He was surprised to hear such an observation, for could those who conducted the prosecution be entitled to say they would select a certain number to prosecute, and because in the case of five of the number who had been engaged convictions had taken place they should not proceed against the rest? They were not there for the purpose of seeking vengeance against these men. They were asking that those who were engaged in a desperate enterprise, such as that indicated, should not escape the punishment which they deserve on account of their connexion with a common desperate design, and they did not want it to be said here or throughout the country that if it could be brought home to any one that he was engaged in that common design, those who conducted the prosecution should allow such a person to go away without having undergone a trial to prove whether he was implicated in the carrying out of that common design. It was important that those whom the magistrates had committed, and those against whom the grand jury had returned a true bill, should have their case submitted to a jury as to whether they were in the rescue or not. If, in any case, the prosecution was not clearly made out, he had at once consented to withdraw it; and, in the particular case of Bacon, it had been proved that a man with a crutch was there at the horses' heads, but it has not been proved that he was the man there, and, therefore, it would have been improper to have to ask the jury to look at the case of Bacon when the evidence failed to say that he was on the spot at the moment the shot was fired. He did not deny that there was fear and confusion, and that there might have been cases of mistaken identity; but that was a question for the jury to determine. He then reviewed the evidence as it bore upon

each particular case, and, with reference to the evidence of Kate Reilly and Beck, in the case of William Martin, he should dismiss them entirely out of the case. He should not ask them to place any reliance on either of those witnesses. The evidence upon which he would rely was that of Patterson, Bromley, Moorhouse, Griffiths, Mulholland, Shaw, Gill, and Schofield. The policeman Gill, who arrested him, said that Martin was in a flushed and excited state when arrested. It was a curious thing that he should go to the house of the woman who said she told him the way to Clayton, and that she should always have her clock thirty-five minutes too fast. Many of the persons who had given evidence were relatives of the accused, and, of course, would have an interested motive in making facts bear in favor of the prisoner. The case for the prosecution was strong, and also that for the defence, and the jury would have to decide between them. The case as to Nugent was a peculiar one, and he must object to the view put forward by Mr. Seymour, that his case was strong if they could place Nugent in a different place, or throw a doubt upon his being in a particular place. In reference to Nugent, he thought that a more completely inconsistent body of testimony could hardly be presented to the jury. Each person had a motive in showing him absent, and they all differed in their facts. After briefly reviewing the evidence for and against the other prisoners, he concluded by asking the jury to consider impartially the case as between the prosecution and the defence.

Mr. Justice Mellor, who summed up the case to the jury, remarked that the prisoners were all charged by the indictment with the wilful murder of Charles Brett. It was not suggested on the part of the prosecution, nor did it appear in the evidence, that it was the hand of any one of those individual prisoners inflicted the injury upon Charles Brett, whereof he died; but the charge against the prisoners was that they were all partakers in one common design—to rescue some of the prisoners from the custody of the law—and that, in the prosecution of that design, they used dangerous weapons, calculated to inflict danger to human life of a deadly character, and that they aided and assisted the man who actually fired the shot of which Charles Brett died. If several persons agreed to rescue prisoners at any risk, and with any amount of violence and force which might be necessary for the accomplishment of their design, and were armed with deadly weapons likely to enable them to accomplish their design, and were armed with deadly weapons likely to enable them to accomplish their design, they were each and all equally guilty of the crime of wilful murder. It would be strange if it were not so, because, in an enterprise of this description, it was manifest that the prisoners were not likely to be taking the same part. In an ambuscade of this kind, every man would have more or less a different part assigned to him. With reference to the observations which had been made upon the conduct of the officer who destroyed the warrants, Mr. Justice Mellor characterized the act as foolish and improper, but he condoned it partly, and accounted for it entirely on the ground of the escape of the men.

The foreman asked if the person who destroyed the warrants was the person who made them out.

Mr. Justice Mellor replied that it was so. He felt considerable difficulty in dealing with the doubts expressed by Sergeant O'Brien on the part of the prisoners whom he defended. It was suggested that there never were any warrants, as they had not been produced, but the common sense of the jury would tell them that it was the universal practice for warrants to be made out when prisoners were brought before the magistrates, and it was, therefore, absurd to suppose that in the case of prisoners of the importance of Kelly and Deasy no warrants were made out. Mr. Justice Blackburn had just reminded him that it was the custom to file the warrants; but these two prisoners having escaped, the officer had concluded that the warrants were useless, and improperly destroyed them. Speaking of the evidence on behalf of some of the prisoners, particularly the *alibis*, the learned judge said he quite agreed that an *alibi* was a defence which might easily be made; but, of course, if it were true it was the best defence a man could have. He agreed, however, entirely with the remarks made by the attorney general, for nothing could be more fair or correct than those observations. Taking the case as against Martin first, Mr. Justice Mellor summarized the evidence for and against him, rejecting, however, the testimony of Kate Reilly and Beck. No special objection was taken to the evidence of Patterson, Acornley, Carrington, Griffiths, Mulholland, Shaw, and Schofield; and even as regarded Beck, although his evidence must be rejected, the learned judge did not think he was a dishonest witness. The *alibi* in favor of Martin was unusually strong and quite consistent; and he was bound to say that all the witnesses called on the part of Martin appeared to him to be open to no observation which impeached their character. It would be observed as being in Martin's favor that all the persons who spoke against Martin had not seen him before; while all those who spoke for him knew him. If what the witnesses for the defence stated was not true, then they were guilty of perjury. As the attorney general had justly observed, the jury must be satisfied, as reasonable men, that the prisoner was guilty; it would not be justice to convict the prisoners if the balance of testimony was not actually against them. Passing to the case of the prisoner Nugent, there was an *alibi* in regard to him which was in some respects well worthy of the attention of the jury. There were fifteen or sixteen witnesses called for that *alibi*, and some of them might be more or less open to observation. There was a considerable array of witnesses also against the prisoner, and none of these witnesses were open to the objection that prevailed in the last case. Commenting upon the

identification of some of the prisoners, the learned judge expressed a wish that throughout this case the plan could have been observed that when witnesses were shown particular prisoners they could have seen them under circumstances which did not give any indication of any particular man being especially suspected. He felt bound to say, in agreement with the remarks of the attorney general, that some of the witnesses for the defence were open to observation as being inconsistent in their testimony; for they appeared to be either inaccurate, or to have invented a few circumstances to strengthen the case, or else they were mistaken as to the day. But he did not attach much weight to these discrepancies. He agreed with Mr. Seymour when he said that, after all, the judgment of the jury must be based upon the substantial merits of the *alibi*. Of course, a prisoner's friends could not always be very discriminating as to the witnesses they called. But there were some of the witnesses against whom there could be no suspicion that they intended wilfully to deceive. The case for the prosecution was strong, and if the prisoner Nugent was not there, then some of the witnesses had undoubtedly perjured themselves. If even a substantial doubt of his guilt existed, he would be entitled to the benefit of that doubt. Against the prisoner Coffey the witnesses were not so numerous, and some of them were open to considerable observation. He reviewed the evidence of those witnesses, and also recapitulated the evidence of those called to establish the *alibi*. The evidence of those who were called from the co-operative store, although they rendered it unlikely for him to have been there, yet was not inconsistent with the fact of his being there. If the manager of the store, Mr. Parker, had been more frank he would not have been open to the remarks of Mr. Seymour. He had the appearance of fencing with the questions; but he was quite sure that the jury would not allow any question of Fenianism to influence their decision. The argument of Mr. Seymour that Coffey, not knowing that he would not be at work that afternoon, could not therefore be concerned in concert with those engaged in the outrage, was one worthy of their consideration. They would have to consider also whether the observations of surprise said to have been made by Coffey when Parker told him of the attack were genuine or well feigned and artful. He next examined the evidence as it bore upon Brennan, for whom an *alibi* had been called not so strong as the others. Coming to the last prisoner, Fetherstone, the learned judge examined the evidence of the two witnesses against him, Thomas Hayes and William Healey. Both of these men deposed to having seen the prisoner Fetherstone throwing stones, and otherwise taking part in the attack on the van. There was no *alibi* in this case. An Englishman, when accused, had a right to say to the prosecution, "Prove your case." He was not bound to call witnesses unless he chose. Of course, if a person could bring evidence in his favor, it would reasonably be supposed that he would do so; but it would be wrong to convict a person because he had not brought forward witnesses. He had now gone over all the cases excepting Bacon's, and as the case against Bacon was one of mere suspicion, although he was identified as having been about the spot, yet the acts attributed to him were so ambiguous in their character, and so capable of honest and easy explanation, that they did not consider it was a case in which he could safely be put upon his trial, therefore the jury would acquit him. They would have to consider each case by itself, and unless they were satisfied with reference to each prisoner that he was a party to the deliberate design, preconceived and intended to be carried into execution, to liberate the two prisoners from the custody of the law by any amount of violence, and by the use of deadly and destructive weapons, to the extent of death, if necessary—that was to say, that at all risks and under all circumstances they were determined to accomplish their object by violence, and that the prisoners were each aiding and assisting—then it would be their duty to acquit them.

The foreman of the jury said they would feel obliged by being informed as to the way in which the reward was likely to be distributed.

Mr. Justice Blackburn said the question had been asked before, and it had been over looked. The attorney general had said that he would obtain the terms upon which the reward was made.

Sergeant O'Brien begged Mr. Justice Mellor to read over the evidence of the boy Hyde when he was before the magistrates, for although the boy said he saw Brennan, he did not say that he saw him with a revolver in his hand.

Mr. Justice Blackburn read over the evidence, on behalf of Mr. Justice Mellor, who was fatigued by his summing up, which had lasted two hours and a half.

No further remarks were made upon this evidence.

The placard issued by the city authorities was handed to Mr. Justice Blackburn, who read it aloud. Its terms are well known to be the offer of a reward of £200, to be paid in such proportions as the corporation might determine, to any persons giving information which would lead to the apprehension and conviction of the guilty parties. There could be no doubt as to the meaning of the offer.

The jury then retired to consider their verdict.

Mr. Seymour, in reference to the future conduct of the case, said he felt it to be his duty to state what he believed would be for the interests of his clients. Questions had been put during the trials by both their lordships to which he (Mr. Seymour) attached great value, and he trusted that while there was still an indictment for murder hanging over the prisoners they would have the benefit of the presence of both of their lordships.

Sergeant O'Brien most sincerely and earnestly joined in this entreaty.

Mr. Justice Blackburn replied that public business in London really required the presence of one of them, and it was not absolutely necessary that both of them should be present in this case.

Mr. Justice Mellor added that they never contemplated that both should sit together, excepting in the first case. They thought it possible that certain points of law might arise in the first trial which might render it important that both judges should be present; but these points of law having been once heard, and the case having taken its present shape, it was quite unnecessary that they should continue to sit together.

Mr. Justice Blackburn was understood to say that he would remain to try the succeeding cases, and that Mr. Justice Mellor would return to London.

Mr. Seymour hoped that what he had said would not be misunderstood, and he bowed cheerfully to this decision.

[By telegraph.]

In the case of William Martin, John Francis Nugent, Patrick Coffey, John Bacon, John Brannan, and Timothy Featherstone, the jury spent four hours in considering their verdict. They sent in once to inquire from the judge whether, if acquitted on the charge of murder, the prisoners could be tried on other charges arising out of the same transaction. Finally they returned into court, at five o'clock, with a verdict of *Not guilty* as to all.

THE THIRD TRIAL.

After the usual mid-day adjournment of half an hour, the third batch of prisoners were placed in the dock before Mr. Justice Blackburn alone, Mr. Justice Mellor having left.

The prisoners are Thomas Scalley, Michael Joseph Boylan, Henry Wilson, Michael Maguire, and William Murphy. They were called upon to plead to the charge of the wilful murder of Charles Brett.

Mr. Seymour said, before the prisoners pleaded, he wished to have the opportunity of availing himself, if he should ultimately decide to do so, of the plea founded on the record of the conviction of the five first tried for murder.

His LORDSHIP. I don't understand.

Mr. Seymour said he wished to be able to plead the contents of that record as an answer to the present charge.

His LORDSHIP. Do you mean that because A has been convicted B must be acquitted?

Mr. SEYMOUR. Suppose A was murdered by B, and C was tried and executed, could B be tried for the murder of A?

His LORDSHIP. Why not? Is it for a moment to be supposed that if a man were murdered by a gang of burglars, and one was tried and convicted, the others could not be dealt with when they were brought to trial?

Mr. SEYMOUR. I wish to state—

His LORDSHIP. It is perfectly and absolutely idle to argue the point.

The prisoners then severally pleaded "Not guilty."

The same counsel were engaged on both sides as in the preceding cases.

When the jury was called into the box no challenges were made.

The ATTORNEY GENERAL opened the case against the prisoners now in the dock, and intimated that he would for the present withdraw the evidence on the principal charge against all except Wilson. He must guard himself from being supposed to say that the others would not hereafter be proceeded against on one of the minor charges. He considered that all the prisoners had been very properly brought to trial, but, in the exercise of his discretion, he felt at liberty to make the distinction he had indicated. The learned attorney general then related the circumstances of the outrage, which have been so frequently detailed.

Police Sergeant JOSEPH YARWOOD was then sworn, and having again given an account of what occurred on the 18th ult., he said he saw the prisoner Wilson on the Manchester side of the arch with Boylan. He was about four or five yards from the arch. He was standing on the footpath. He was doing nothing.

Mr. Justice BLACKBURN. He was standing as any ordinary foot passenger might be? Yes.

Mr. SEYMOUR. The van had not then arrived at the arch; and witness saw him from the van, as they passed.

Another adjournment took place while the jury went to inspect the van.

Police Detective BROMLEY repeated much of the evidence he had given in the former cases.

The lad PATTESON was giving evidence when our report was despatched.

[From the London Times, November 8, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, Thursday.

Yesterday evening the evidence against the third batch of prisoners—or rather against that one of them (Wilson) at whose house Kelly and Deasy were arrested—was of

a very formal character, consisting of the repeated statements of witnesses whose descriptions of the outrage have several times appeared in the previous reports. The only exception was with regard to the warrant against Kelly and Deasy, which Inspector Garner had torn up after their escape, believing it would be of no further use. On this head an additional witness was produced for the Crown—Inspector Platt, of the detective department—who stated that he remembered seeing the remand warrants of Kelly and Deasy on a desk in the detective office on the evening of the day they were rescued, and that he kept them there till the following evening, when he handed them over to Garner.

The court then adjourned.

At the sitting of the court this morning, at 9 o'clock,

Henry Wilson was again put forward upon an indictment charging him with the wilful murder of Sergeant Brett.

Mr. Pickering, Q. C., stated that since the previous evening he had the opportunity of carefully conferring with the attorney general and his learned friends associated with him for this prosecution, and had come to this conclusion: that there was not evidence sufficient to sustain the indictment for murder against the prisoner Wilson, which the Crown accordingly felt bound to withdraw. In adopting this course the Crown were largely influenced by the fact that two witnesses who were to have spoken most positively to the identity of Wilson (*i. e.*, Kate Reilly and John Beck) were witnesses on whose testimony the Crown could no longer place implicit reliance.

The four other prisoners included in the same bill found by the grand jury, *viz*: Thomas Scally, M. J. Boylan, Michael Maguire, and W. Murphy, had been previously directed to stand back by the attorney general, so that this announcement amounted to a withdrawal of the main indictment against all five.

Mr. Justice Blackburn said that after the course which the attorney general in his discretion had felt it right to take, there was only one course remaining, which was to direct a formal acquittal of the prisoners.

A formal verdict of "Not Guilty" having been accordingly entered,

Mr. Justice Blackburn, referring to the legal question which had been so much discussed in the previous trials, said he had forgotten to put to the former jury the question definitely whether a warrant for the committal of Kelly and Deasy existed or not; and asked whether there would be any objection to put to the jury now in the box this formal issue.

Mr. D. Seymour thought there might be a certain inconvenience in obtaining a finding which would have a retrospective operation, and in the absence of his learned friend, Sergeant O'Brien, would prefer not to give a positive answer on the point.

A short adjournment here took place. On returning into court,

Mr. Justice Blackburn asked what course it was intended to pursue.

Mr. Pickering said the Crown did not intend to proceed with any of the indictments for felony.

Mr. Justice Blackburn said he had not exactly in his recollection the nature of the bills found by the grand jury, but he believed they were based upon indictments charging murder, felony, and misdemeanor. Was it intended to abandon the indictment both for murder and felony?

Mr. PICKERING. Quite so.

Mr. Justice BLACKBURN. Then upon what do we now proceed?

Mr. PICKERING. We are now going to proceed against the prisoners for misdemeanor. The charge will be for assaulting police officers in the execution of their duty, and there is also a count for riot.

Mr. Justice BLACKBURN. Do you proceed against all upon those charges?

Mr. PICKERING. The indictment which we propose to take first contains the names of seven prisoners. We mean only to go against three of these; we shall not offer any evidence against the others.

Mr. Justice BLACKBURN. But that will in any case entail bringing up all the prisoners. Would it not be better (I throw this out for consideration) for the Crown at once to enter a *nolle prosequi* in the case of those against whom it is not intended to proceed? The effect of this would be to enable the men at once to be discharged, instead of keeping them here merely standing in the dock.

Mr. Seymour suggested that it would be more satisfactory to follow the precedent set in the last case, and take verdicts of "Not guilty."

Mr. Justice BLACKBURN. That is entirely a matter of discretion with the court.

Mr. SEYMOUR. As far as the court is concerned, certainly, my lord. But I put it to my learned friends whether, in the absence of the attorney general, they would not think it right to follow the course taken when he was here.

Mr. Pickering said the Crown would act upon the suggestion thrown out by the court, and enter a *nolle prosequi* in the case of four of the prisoners, namely, James B. Chambers, Thomas Johnstone, John Martin, and Thomas Ryan.

A formal entry to that effect was accordingly made upon the record.

Mr. Justice Blackburn said he did not formally call upon the Crown to state now which of the prisoners included in other indictments it was intended to release; but as there could

be no object in prolonging their incarceration and suspense, he hoped counsel, at the earliest moment in their power, would make up their minds upon the subject.

Mr. Pickering said he would take the first opportunity in his power of examining the entire list, and announced that the Crown would now proceed against John Carroll, Charles Moorhouse, and Daniel Reddin.

Counsel for the prisoners stated that they were taken by surprise at the order in which these prisoners were called up, having analyzed the evidence in other cases, expecting that these would be the first entered upon.

Another adjournment for half an hour accordingly took place. At the expiration of this interval,

Sergeant O'Brien stated that the Crown having withdrawn the graver indictment, he and his learned friend Mr. Seymour would not further appear. He therefore wished respectfully to inquire whether or not, and if so, when they might expect to receive from the court an intimation with regard to the legal points raised in discussion.

Mr. Justice BLACKBURN. As soon as I return to town my brother Mellor and I will go carefully into the matter and find if there are any authorities which bear out the view that has been contended for. If we learn that any of the other judges, who of course are aware what the point is, or from anybody else for whose opinion we entertain respect, feel that there is room for a reasonable doubt, and that the point is one which ought to be discussed, we shall take care that you receive timely notice, brother O'Brien. But if we retain our present opinion that there is nothing in it, no such point will be reserved.

Sergeant O'Brien bowed and withdrew.

Carroll, Moorhouse, and Reddin were then formally indicted for assaulting and beating police constables Taylor, Trueman, and others, with endeavoring to prevent the arrest of persons named White and Williams, (*alias* Kelly and Deasy,) and also upon a general count with riot.

Mr. Pickering, Q. C., Mr. Sowler, Q. C., Mr. Hannen, and Mr. Higgin represented the Crown.

The prisoners were defended by Mr. Cottingham and Mr. Ernest Jones.

Mr. Pickering, Q. C., stated the case for the Crown, observing that it was unnecessary for him to do so at any length, the jury (the same which had been impanelled in Wilson's case) having already had the advantage of hearing the attorney general.

Constables Yarwood and Bromley were called, and their evidence upon the general facts of the attack read over from the judges' notes. The same course was pursued with the witnesses Thomas Patterson and Hannah Pennington.

Constable JOHN TAYLOR, who was sitting in front of the van, deposed that among the forty or fifty men whom he saw waiting for the van to come up, ten or twelve had revolvers, which they held by their sides, apparently to conceal them as much as possible. The man on the extreme left stepped forward and fired at the horses, and then there was a cry of "Go into them." Witness was struck by a brick and rolled off the van; as he did so one of the men presented a revolver at him; ran down the road, and in eight or nine minutes, when he had partly recovered from the shock, he went back again and saw Allen and others firing to keep back the crowd. Went away again and procured an axe. On his second return Brett had fallen out, the prisoners had been released, and the men were running away. Three men turned round and fired as they were pursued.

Cross-examined by Mr. COTTINGHAM: There was great confusion, firing, and knocking. Remained looking on about a minute before he went for the axe. Saw men on the top of the van.

Police Constable TRUEMAN, one of four in the cab behind the van, deposed that as he was retreating from one of the rushes he was struck by a shot and stone.

EMMA HALLIDAY, the female prisoner who saw the shot fired that killed Brett, deposed that when she got out of the van she was driven back from the arch by persons throwing stones. There were stones thrown both by persons at the police and against the police. [This answer gave rise to some uncertainty, but it was afterwards explained that persons "against the police" meant, in the Lancashire dialect, persons standing beside and assisting the police.] She identified the prisoner Reddin as among those who were throwing stones at the police.

Cross-examined by Mr. ERNEST JONES: There were six or seven persons in the vicinity of the van throwing stones at the police when she got out. Reddin was among them. Was about a minute in the middle of the stone-throwing; was much confused and alarmed. Heard in the witness room at the police office a conversation about the reward; believed that a newspaper was read out.

To the JUDGE: Was quite sure about having seen Reddin. Had never known him before.

JOHN KNOWLES deposed that on top of the van he saw a man whom he believed to be the prisoner Carroll; he was like him, but he would not swear that he was the man. Saw the young man in the centre, (Moorhouse,) he believed, during the attack; but he appeared to be altered in appearance some way.

Cross-examined by Mr. COTTINGHAM: Was examined before the magistrates. Had gone to the police office nearly every day between the attack and his examination at the police office. Did not say a word there about Moorhouse.

JOHN SLACK, cab proprietor, who was on an omnibus following the police van and cab

which was stopped by the armed crowd, expressed his belief that the prisoner Reddin was among the crowd on the bank waving his arms and shouting as if he were an officer giving orders, but he was dressed differently now. He was one of the first who went away with the prisoners released from the van.

CHARLES THOMAS, plumber, examined by **Mr. HIGGIN**: Identified Reddin as being under the archway. Saw him throwing stones. Witness was then within twenty or thirty yards of him. Had seen him two or three hours before walking about the streets, seemingly giving directions to the other men, the men who afterwards attacked the van.

Cross-examined by **Mr. JONES**: Had never seen Reddin before that day; he was a perfect stranger to him. William Hulley and Thomas Brouley were with witness that day for about ten minutes, till the attack on the van commenced. Drew the attention of his companions to two men with pistols, as he thought they were going to fight a duel. Did not draw their attention to Reddin giving orders. Saw him next in the lobby of the police office with other persons. Some he knew were in custody, but could not say that they all were. The coat Reddin had on at the arch was braided; thought it was a black hat he had on. Had identified the prisoner Coffey, who was tried in that court the previous day, and acquitted. Had been taken repeatedly to the jail and police office to identify prisoners. Heard of the reward before he identified Reddin, but not before identifying other prisoners. Heard how it was to be apportioned.

Mr. Pickering applied that the prisoner might be directed to take off his great-coat, which being done, the witness identified the coat underneath, which was braided, as the one that the prisoner had worn.

To **Mr. JONES**: That was the coat the prisoner wore when I identified him in the lobby.

THOMAS BELL, in the employment of the Midland railway, deposed that when the men were running away, he saw one man being helped over the railway wall who had a great-coat over his hands. Another man, with a brown paper parcel in his hands, was also being helped over the wall. Saw the prisoner Reddin coming from the Hyde road; he was not with those helping the men over the wall, but came about the third or fourth. Witness spoke to him and told him he would get over the wall easier if he went lower down. Witness did not know at that time what had happened. One of the men with Reddin said there had been a prize fight.

Cross-examined: Reddin did not stop; he was between a run and a walk. Witness was about two yards from him. Had some doubts about Reddin the first time he saw him in custody; he was in custody with other prisoners. Made up his mind about him on the second occasion.

WILLIAM BATTY deposed that he saw Carroll upon the police van. Saw him lift a large stone and throw it down on the top of the van more than once. The last time the stone bounded and fell to the ground.

Cross-examined by **Mr. COTTINGHAM**: The confusion was not so great while Carroll was on the top of the van. It was much greater after the stone fell. Was in a cab on his way to Bellevue, with his wife and three children, at the time the attack began. Heard what he thought were fog signals, except that he heard no firing. His wife and children got out of the cab, and after he had remained looking on for a very short time he took them into a bread shop on the right-hand side of the road. Before he saw Carroll on the top of the van, he saw a man in light clothes there; also two men in dark clothes, to whom he did not swear. Saw in all three men there when he got out of the cab. Was only looking on a very short time, when his wife came for him.

Constable **WILLIAM CARRINGTON** deposed that he was on foot, walking in the direction of the van as it approached the arch. Met it about 300 or 400 yards away from the arch. Had previously noticed the prisoner Carroll standing on the Manchester side; he was on the foot-path, with his back towards the arch. There were several other people on the Manchester side of the arch as well, passing backward and forward. After the van passed through heard the report of pistols and shouting. Turned back and went through the crowd towards the van. Two revolvers were pointed at him by one man. Saw Sprossen shot in the foot.

Cross-examined by **Mr. COTTINGHAM**: It was from half an hour to a quarter of an hour before the attack that he saw Carroll. Brett was shot before witness got back to the arch. Identified William Martin as one of the men taking part in the row.

EDWIN COOPER, a weaver, had been inside an omnibus coming from Belview to Manchester, which was stopped at the toll-bar. Got pretty near the van, but stopped when a large stone fell near him. Heard pistol shots, and saw smoke arise, but did not see who fired them. Saw a man with a large stone on the roof trying to break the roof in; that was the prisoner Carroll; he used it several times, and once witness heard the roof crack. The stone fell off once, and somebody handed either it or another up again. This was also used, but could not say how often.

Cross-examined by **Mr. COTTINGHAM**: Was not examined before the magistrates. The first thing he knew of it was his superintendent fetching him from his work. That was on the 1st of October; had not previously heard anything from the police. Worked at Glossop mills. It was what was called "Glossop week," and a party were going to Belview gardens. A young woman was with him, but she saw nothing, having stopped at the toll-bar. She was frightened, so he left her up the road. As soon as he got out of the omnibus she stopped.

Went back afterwards and found her where he left her. The van passed up to the jail afterwards. Went back to Glossop that night, and worked next day. Heard there was a reward for the capture of Kelly and Deay. Also heard of the reward for evidence. Saw it in the Manchester Times. Had taken the paper in "our house" for several years. Cannot say whether he saw it next Saturday. Had seen it, of course, before the 1st of October. The men on the top of the van were strangers to him. Was viewing the attack, perhaps, for a quarter of an hour. Did not go back to the omnibus. Walked into Manchester, and so he paid nothing. [Laughter.] Could not see who handed up the stone; it was contrary side. Was himself nearly in the middle of the road—a good way down. Left the young woman at the toll-bar. It was not that he did not care to go far from her, but knew she would not go far from him. [Much laughter.] If he had got into danger she would have followed him.

ELIZABETH ROBINSON deposed that as she was walking along the road on the 18th she saw a man with a pistol in each hand; she also saw Carroll between the van and the archway; he was throwing stones towards the van. Also saw him on top of the van.

Cross-examined: A lady was with her that day. They missed each other during the attack, and could not say where her friend went. Stones were flying thickly towards the van. Did not see stones thrown in return. The shots did not alarm her much. She tried to get away as quickly as she could.

EDWARD WALDEN deposed that on the 18th of September last he was a tobacconist, living at 256 Hyde road, about forty yards from the arch on the Manchester side. In consequence of something that was said to him he went into the road and saw a man battering the top with a very large stone. There was a large crowd round the van firing pistols and throwing stones. Got within seven yards of the archway. Carroll was the man on the top of the van. Witness went back to his shop to put the shutters up, and then returned and saw the shot fired, which, he believed, killed Brett. Again saw Carroll in the same position as before. Was not more than three minutes absent, having had assistance in putting up the shutters. Saw another man alone on the top of the van whom he had never seen since. He was using a large stone in the same way. Saw Larkin fire a revolver and throw stones, and run, he supposed, twenty yards towards the people. Pursued Larkin and took him.

Cross-examined by Mr. COTTINGHAM: Gave evidence before the magistrates at Bridge street, but this was his first evidence given at this trial. Had been in attendance daily, but was not called. The mark on witness's face was given him by a man who yesterday got a month's imprisonment for doing so. At the time of the attack witness had been for two years a tobacconist, but had given up the business. Was now pork-butcher. John Berry, who assisted him to put up his shutters, was an engine driver on the Northwestern railway; he was in bed, having come from Rugby the night before. Witness was also lying down in his clothes; heard one shot, and then his wife called him. Should not have got up otherwise, as he often heard firing there. The engine driver had lived with him for eight months. Berry would not go down, but stood by the shop door. When witness took Larkin he said to him, "I have never seen a man hung in my life, but if you are hung, I will see you hung." Witness repeated that before the magistrate. Entertained strong opinions against Fenianism. Might have said before the magistrate, "I saw Larkin shoot one of the van horses in the neck; this was before he got on top of the van." Could not recollect saying that he saw Larkin on the van. Never got nearer the arch than seven yards. Was never through the arch. Berry "prevailed" upon witness to stay with him; he would not go from the shop, but witness did. Meant by "prevailed" that Berry persuaded him. In point of fact he did not persuade him, but tried to. [Laughter.] Had sworn to Nugent as "throwing stones and keeping the police at bay." Saw Carroll at Albert street, but was not "certain" that it was on the 19th.

To the JUDGE: I cannot now tell whether I saw Larkin on the top of the van or not.

Mr. Justice BLACKBURN. In your deposition you are represented as saying this: "When I came back from putting up the shutters I saw Larkin close to the van. I did not hear him say anything, but directly afterwards he got on the van, and somebody among the persons there handed him up a stone." Do you recollect saying that?

WITNESS. My lord, I was examined for an hour and fourteen minutes, and I think I am to be slightly excused if my memory fails me a little as to all I then said.

Mr. Justice BLACKBURN. I don't want you to excuse yourself, I only want to know if you recollect that—if it was rightly taken down.

WITNESS. I am not going to swear a thing I don't recollect. I cannot swear about Larkin; everything else I do distinctly swear to.

Mr. Justice BLACKBURN. What I want to know is this: What you then swore with regard to Larkin is very like what you have now sworn with regard to Carroll. Is there any possibility that you can have taken one for the other—that you have made a mistake, not in the facts, but the man?

WITNESS. My lord, there is no mistake.

Mr. F. S. Austin, clerk of the peace, produced the conviction of Frances Armstrong, one of the female prisoners in the van.

The jurors summoned upon the earlier panels were here released from further attendance. One of their number handed a memorial to the judge, who, having read it, said that in the precautions necessary to prevent the court from being overcrowded, some things must neces-

sarily have happened of an unpleasant character. The matter, however, was not one in which he could interfere.

WILLIAM HUGHES was with a number of friends at the arch before the van came up. He saw Moorhouse on the high road about 12 o'clock, (noon.) Saw him again half an hour before the van came up at the Halfway House, but did not see him afterwards.

GEORGE SHAW, police constable, said he was on the front of the van on the 18th, and repeated his account of the attack and rescue. He saw four men on the top of the van. Among those throwing stones at the police, he saw the prisoner Moorhouse. Had never seen any of the prisoners before.

WILLIAM WALKER: On the 18th of September was in Gorton lane about 20 minutes past 4, coming from his work, going towards Ashton Old road, and saw a number of men running, and saw Allen and Gould captured. Saw Moorhouse running with three others. It was half a mile from the arch.

In cross-examination by Mr. Cottingham, the witness said he did not know there was a reward offered in this case. Being pressed to look the jury in the face and answer the question again, the witness said he did not know. Afterwards, however, he explained that it was because he could not read the reward if he saw it that he had said he did not know of it. He had heard of it many a time. He could swear he had not heard of the reward before he was examined by the magistrates. He had heard of it first about a fortnight ago, as near as he could guess.

The next evidence repeated was that of Inspector Garner and other officers with regard to the warrants under which the prisoners in the van were being taken to the jail.

GEORGE REDHEAD, gatekeeper at the jail, proved that he received a satchel of papers on the 18th ultimo, after the attack on the van, from a little girl. He gave them to Jones.

OSWALD JONES proved receiving a bundle of papers, and saw they were commitments. He copied the prisoners' names, and called them over to the prisoners brought in the van. White and Williams, whose names were there, were missing. Handed the papers to Moss.

HENRY MOSS, clerk at the jail, proved receiving the commitment warrants. Read the names of Williams and White (Kelly and Deasy) in them.

By the JUDGE: Did any one separate the papers relative to the two prisoners not received from the others?

WITNESS. I did.

The JUDGE. What did you do with them?

WITNESS. They were handed over to Hyde for Mr. Maybury.

The JUDGE. In your presence?

WITNESS. In my presence.

By Mr. COTTINGHAM: All the papers were handed over for Mr. Maybury for prisoners not received.

Mr. Superintendent MAYBURY sworn. He received some papers from Hyde, but did not look at them. He laid them beside Mr. Platt at the detective office. Saw Platt hand papers like them to Garner.

Platt's former evidence as to what became of the papers was then read by the judge, and he said it was correct.

GARNER was called and some papers were put into his hands. He identified one of them as one of the commitments of that day, but not of those he received from Mr. Platt along with the commitments of White and Williams, which he destroyed. He produced from his pocket one of a woman named Caroline Flood, who escaped from the van and has not been heard of since. That was one of the set from which he took the ones destroyed.

The judge said he thought at last they had traced the warrants.

The case for the Crown was then concluded, and Mr. Ernest Jones was addressing the jury for the defence when our report was despatched.

[From the London Times, November 9, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, Friday.

Mr. Ernest Jones, in a short address yesterday evening, intimated that he should prove *an alibi* for the prisoner Reddin.

The prisoner's landlady, MARY MCKEOWN, of 16 Newton street, Great Ancoats street, gave evidence that Reddin was drinking for several days before and after the 18th of September, and on that day was only out of the house for very short intervals of time.

The court then adjourned, and Mr. Justice BLACKBURN directed the discharge of the prisoners Chambers, Johnson, John Martin, and Ryan, against whom a *nolle prosequi* had been entered.

At the sitting of the court this morning at 9 o'clock,

The trial of John Carroll, Charles Moorhouse, and Daniel Reddin, for riot and misdemeanor, was resumed.

Mr. Pickering, Q. C., Mr. Sowler, Q. C., and Mr. Higgin conducted the prosecution. Mr. Jones defended Reddin; and Mr. Cottingham defended Carroll and Moorhouse.

The first witness was

JOHN SHANNON, provision dealer, who deposed that he met Reddin, whom he had known for a fortnight or three weeks before, in Great Ancoats street, about 4 o'clock on the 18th. He had been always well conducted.

ANNA MARIA WRIGHT, who lodged in the same house as Reddin, deposed that on the 18th he got up at 11 o'clock and was drinking at home till 3 o'clock, when he went out and remained away till five minutes past 4. He returned with a tailor named Molloy, who put him to bed after he had a glass of ale.

Cross-examined: Witness was in the kitchen all day. Reddin had lodged there about six weeks. He staggered when he went out at half-past 3.

ESTHER WILLIAMS, wife of Joseph Williams, plasterer, deposed that she boarded with her sister, Mrs. McKeown, but did not sleep in the house. Went there at 8 o'clock in the morning and stayed till 7. Was making a dress for her sister that day. Reddin was drinking, and witness fetched some beer for him at half-past 1 o'clock. Could not say at what hour he got up, or what he was doing particular that day; but he went out about half-past 3, and returned five or ten minutes past 4. Had not lived with her husband for seven years. Could not tell where he was.

Cross-examined by Mr. PICKERING: He appeared to have drunk more while he was out. Saw Reddin get up and go out; he was not very drunk, and walked quite steady. He came back with another man, a tailor, who put him to bed at half-past 4. Reddin usually breakfasted with the family, unless he was out working. Reddin did not go out several times that day. All that week he spent very much the same way—going out about half an hour in the morning and drinking during the afternoon. He did not go to chapel on Sunday; he had been drinking from the Saturday. On the Tuesday he went to bed probably at his usual hour. Ten o'clock was Mrs. McKeown's hour for the lodgers to go to bed. Could not say positively one way or other what time Reddin did actually go to bed on the Tuesday, Thursday, or Saturday.

JAMES KEELY, painter, deposed that Reddin got up about 11 o'clock on the 18th of September, and washed and cleaned himself and went out. He came in at half-past 1 o'clock. He stopped in then till about 3 o'clock, and then went out again. He came in about 4 o'clock, when Mrs. McKeown was getting tea. He then had some drink in him. A man named Molloy was with him, with whom he had a glass of beer; they then got him up to bed. Witness was not able to help him up, because he had a cut hand which he got the day before, which had knocked him off work. When the men came in from work they brought in news of the accident; having had their tea, they went up stairs and told Reddin, so he got up about ten minutes to 7 and went out with them. Witness's brother had since left the neighborhood.

Cross-examined: Was lodging at Mrs. McKeown's since May. Witness was in doors all day. Reddin had a sup o' drink on him when he returned at half-past 1. Did not look at the clock when he went out at 3. Said 3, because by his opinion it was about 3. Did not look at the clock when he came back; but they sat down at ten minutes to 4 o'clock, and Reddin came in while they were sitting down at it. On Thursday witness was at home the most of the day. Went out twice, but was at home from 11 to 4. Reddin was at home the most of that time. Thought Reddin went to bed at 10 o'clock on Thursday. On Friday he was drinking, and came in about half-past 9 o'clock. Was not examined before the magistrates; went to Mr. Roberts himself on Saturday week.

LAWRENCE MOLLOY, tailor, deposed that at 2 o'clock on the 18th of September he saw Reddin in the yard of his house, the door of which is opposite Mrs. McKeown's. At five minutes past 4 o'clock saw him going into Mrs. McKeown's, and went in with him. He had some drink on him, but could not say how much. Witness asked him to have a glass of ale, and he had; but Mrs. McKeown refused to get Reddin any ale, because he had enough. Reddin then said he would go to bed; he went up by himself. Witness saw him up, and went as far as the stairs with him.

Cross-examined: Saw Reddin go up the stairs. Did not go to put him to bed; did not go into the room with him. After witness came into the house, Reddin had nothing to drink. Witness remained in the house about ten or fifteen minutes. There was a clock in the witness's house. It keeps very good time. Noticed that it was five minutes past four. Before that day never happened to look at the clock particularly.

To the JUDGE: Could not remember what day Reddin was arrested.

This closed the evidence on behalf of the prisoner Reddin.

Mr. Cottingham then addressed the jury on behalf of Carroll and Moorhouse, upon whose behalf separate *alibis* were also sought to be established. He called the following witnesses:

JANE McMANON deposed that her husband was a dyer and cleaner. Had known Moorhouse eight or nine years. He had been in Manchester about ten months, and was a letter-carrier on trial in the post office. Knew Carroll also, but had only seen him twice in her life. Knew the Clarendon beer-house. Left her own house to get a quart of beer there, at five minutes to four. On going into the beer-house both Moorhouse and Carroll were in it.

They were playing cards and drinking, at least they had cards before them. Spoke to Moorhouse not to Carroll. Remained at the Clarendon whilst Mr. Clooney went to the cellar for the beer. Before leaving home she desired her daughter to make ready the tea, as it was now close on to 4 o'clock. Looked at the clock. Was examined before the magistrate.

Cross-examined by Mr. PICKERING: Did not always look at her clock before leaving her house. Did that day, and usually did look at the clock coming tea hour or dinner hour. Could get from her home to the Clarendon beer-house in two minutes. Walked briskly that day. Went to the Clarendon beer-house for beer as often as she required—not for drinking purposes, but for her business. The amount of beer depended on the quantity of business she got in during the week—sometimes one quart, sometimes two. Never went to the Clarendon again, for it closed that week. There were probably seven men in the Clarendon that day, and a great many glasses on the table. There was an old man named Moore sitting at the end of the table, and she thought he was concerned in the game. This was one of the only two occasions on which she had seen Carroll; the other time was casually in the street. Recognized Moorhouse immediately she saw him; had stated before the magistrates that it took her two or three minutes to recognize him. Had very good reason to remember the day, because her house being next the police station in Livesey street, Carroll and Moorhouse were taken past in custody shortly afterwards by the police. Did not want to be a voluntary witness, but Mr. Roberts sent her word. It was three or four days before she was examined at the police office on the 4th of October that she mentioned what she had seen.

Re-examined: Her children all knew what she had seen. Had mentioned it to her husband.

JULIA HART, wife of a steelworker, and sister of T. Clooney, the keeper of the Clarendon, deposed that she went to her brother's (or, as she called it, her father's) house about ten minutes to three on the day of the attack on the van, and remained till ten minutes to four. Knew Carroll and Moorhouse; saw them both at the Clarendon that day. Saw that Carroll was playing cards. Only just passed through, and went to the kitchen and passed out again. Could not say whether Moorhouse was card-playing or not. Went straight home.

Cross-examined: Went often to her father's house, but not every day. Had a little child, and also some mangling to attend to. Went at that hour, because her father did not give over working till after 2 o'clock. Went usually at all sorts of hours, just as it suited. Knew some of the other men there at the time. Knew Pat Berrigan, John Geary, Louis Moor, and Mr. Daly. Spoke to Daly and Berrigan, because they came into the kitchen. Had often seen Carroll and Moorhouse there before that day. Carroll oftenest of the two. Could not say that she had ever seen them there together till that day. Looked at the clock in the room where they were card-playing as she went through. Could not say when before this day she had last seen Carroll or Moorhouse.

To the JUDGE: Had no reason to know that it was the 18th of September, except going to see her father. Did not hear of the attack till 8 o'clock that evening. That was the same day she had seen Carroll and Moorhouse at her father's.

T. CLOONEY, a hale old man, deposed that his son kept the Clarendon. He himself was a sleeper under the corporation. Remembered the 18th of September; had very good reason. Went to his son's house that day at 3 o'clock. Both Carroll and Moorhouse were there when he went in. Stayed there till five o'clock, when they and he were both arrested. His daughter came to the Clarendon about ten minutes after his arrival. Knew Carroll and Moorhouse some time. They never left the public house from 3 o'clock until they were taken. Witness was brought before the magistrate, and discharged. A good many people came to look at them. Had been fourteen years employed by the corporation of Manchester.

Cross-examined: Went mostly to his son's house every day. Got his dinner sometimes at one, sometimes at two, or later. The men had so much work to do every day, and could not be up to the one time always. Had not his work over that day till 2 o'clock. Went home first to his own place and took off his "corporation clothes;" after that sat down and smoked a bit. That made him late at dinner that day. Always went home first before going to dinner. The regular dinner hour allowed by the corporation was from eleven to twelve. If they could get it earlier, well and good; but they were allowed that.

Re-examined: Gave before the magistrate the same evidence he had given to-day.

To a JUROR: The wages paid by the corporation were fifteen shillings a week.

LOUIS MOORE, a joiner, deposed that on the 18th of September last he was in Clooney's beer-house, and remained there till the police came and apprehended Carroll and Moorhouse and witness. Saw Carroll and Moorhouse in the beer-house at 12 o'clock, and till they were taken. Witness remained there the whole time. They were playing cards and taking a glass of ale. They were in the game with him, and witness was playing either with them or against them during the whole time. Witness was brought before the magistrates and discharged by them, after having been in custody a fortnight. During that time was constantly seen by police and witnesses.

Cross-examined: Could not be positive what the game was; either "all-fours" or "forty-fives." Did not play for money, or yet "for love;" generally it was for a pint of beer. When he went in at twelve o'clock, Carroll and Moorehouse were the only persons there he knew, but there were four or five others. Witness joined in the first game after he came in. Played the whole time—from twelve to five. Played a good many games during the time, but the

stakes were so small. Did not often play cards during the daytime, but was not well that day. It would be a fortnight before that when he was last in the Clarendon. Was at the time a foreman to a builder, but lost his situation through his incarceration. Was now at work again. Had been at work on the morning of the 15th of September till half-past ten o'clock, but not feeling well left his work and went for a walk, and went into the Clarendon with a friend for a glass of beer.

To the JUDGE: It was a four-handed game they played. Different persons joined in it from time to time; but except Carroll and Moorhouse, he knew none of their names.

JOHN GEARY deposed that he went to the Clarendon about twenty minutes to four on the 18th of September. Left at a quarter past four. Carroll and Moorhouse were there all the time he remained. Directly after going home he heard of the arrest of the men whom he had left behind at Clooney's. Lived about 150 yards from them.

Cross-examined: Was last at Clooney's, to the best of his opinion, about five o'clock on the Saturday before the 18th. When at work he worked till six o'clock in the evening, but was out of work at this time. Noticed the clock direct in front of him when he went in. Pat Clooney, Pat Berrigan, and Louis Moore were there with the prisoners. Did not play cards himself. Had one glass he paid for with his own money, and one the men at cards gave him. Mrs. McMahon came in from the street, and Clooney's daughter passed through to the kitchen. These were the only persons who came in while he was there.

Mr. Jones then summed up the evidence on behalf of his client Reddin. He discussed at some length both the nature of the evidence by which an *alibi* was capable of being sustained, and the objections that could fairly be urged against such evidence. His learned friend, Mr. Pickering, sought to weaken the force of the positive testimony given by pressing the different witnesses as to other occurrences upon the same day of which they were speaking, founding of course an argument upon any want of recollection upon their part. But it must be remembered that it was only by an effort that men could throw back their minds to bygone circumstances; some simple fact, perhaps, was mentioned accidentally which brought back a chain of recollections with it, and enabled them to speak connectedly and accurately to the material portion of the day. But the same efforts had not been necessary, and hence had not been made, with regard to other days or portions of days. The prosecution had not insinuated anything against the moral character of the witnesses, and therefore he placed their evidence before the jury as entitled to full credit and belief. The learned counsel strongly warned the jurors against being led to convict in a case of riot or assault upon evidence which would not satisfy them if the indictment were one for murder.

At the conclusion of the learned counsel's address,

Mr. Justice BLACKBURN said: I have to thank you, Mr. Jones, and to compliment you upon aiding justice by as able and proper a speech as, I think, I ever heard.

Mr. Cottingham was then heard on behalf of his clients, Carroll and Moorhouse. At the outset he warmly condemned prosecutions for constructive offences as savoring in their nature somewhat of artificial crimes, and therefore repugnant to the sense of Englishmen. In this case neither Carroll nor Moorhouse was charged with personal violence to any one; their guilt, if guilt were brought home to them, would be the result of countenancing the acts of others. Like Mr. Jones, Mr. Cottingham took the earliest opportunity of expressing his sense of the entire fairness and impartiality with which the Manchester police had given their evidence. The character of the youth Moorhouse must have undergone investigation before he was allowed to act by the post office in any way. On the other hand, the attack upon the van must have been made with concert and premeditation, by men who knew and could thoroughly trust each other. Was it likely they would admit to their counsels a lad like Moorhouse, who was actually in the service of the Crown? The evidence in support of the *alibi* was unusually powerful, for it was given in some cases by men who, having once been in the clutches of the law and released, yet did not hesitate to come forward as witnesses, thereby challenging renewed inquiry as to their own acts and antecedents. There was no room for doubt about the testimony for the defence. The jury could only reject it if they were prepared to adopt the assumption that all the witnesses were lying, and were deliberate conspirators and perjurers.

Mr. Pickering, Q. C., replied on behalf of the Crown, with whom, he said, there was no desire to press unduly for a verdict, but simply to assist the jury to a right conclusion by calling their attention to the salient points of the evidence. That the police constables had been assaulted in the manner stated no one, he thought, could entertain a doubt, or that this was the result of a preconcerted plan. It was immaterial by whom the particular brick or stone might have been thrown, if the general onslaught and concert were established and the fact proved that the accused were on the spot. Where such a violent attack was made by fifty or sixty persons, it was impossible that any particular witness could see all, or more than a very small portion of what actually passed. And, therefore, he had been surprised to hear one of his learned friends call in aid the silence of particular persons as to acts which they had not witnessed as conclusive evidence that they did not happen. The learned counsel minutely and most fairly to the prisoners dissected the evidence, and left it to the jury to say which of the witnesses they believed.

Mr. Justice BLACKBURN, in his charge to the jury, said that as to the leading facts of the affray there could now be little controversy, and the real question for the jury to decide was

whether it had been made out to their satisfaction that the prisoners were really present and taking part in the commission of that offence, which, assuming that they were present, would equally implicate them all in its consequences. He further left it to the jury to determine, affirmatively or otherwise, whether, on the 18th of September, when Kelly and Deasy were being sent to the jail, a warrant for their committal had been made out and signed as deposed in evidence. The learned judge recapitulated at considerable length the facts with regard to this warrant, apparently expecting that the jury would find in the affirmative, as a matter of course. One of their number, however, said that a difficulty was felt by his colleagues because the magistrate who signed the warrant had not been produced; and though the judge explained that the signature was appended very probably as a matter of form, the jury still intimated that they would like to retire and consider the matter. In that event the judge said they had better wait and consider all the points together, and accordingly proceeded with his charge generally. There could be no doubt that the constables, Taylor and Trueman, were both assanlted. In considering whether the prisoners were guilty of that assault the jury must be satisfied merely whether they were present under circumstances indicating that they were aiding and assisting in the attack. All that Mr. Jones had brought before them on behalf of his client was very proper matter for their consideration, and had been submitted to them as fairly and impartially as it ought to have been from the bench. His lordship reviewed successively the evidence for the Crown and for the defence in the several cases of Reddin, Carrol, and Moorhouse. The summing up was not concluded when our report left.

[By telegraph.]

The jury were absent over two hours. They found that the warrant existed, and convicted all three prisoners. Sentence was deferred. Seven others, including Harry Wilson, have been arraigned for misdemeanor. They pleaded "Not guilty."

The abandonment by the Crown of the graver charges naturally deprives the remaining trials of much of their public interest. The authorities, however, have not relaxed any of the precautions surrounding the removal of prisoners to and from the court-house. They are still escorted, as heretofore, by infantry and cavalry; and so severe have been the duties entailed upon the fifty-seventh and seventy-second regiments in providing the necessary guards to the court, the jails, &c., that the men, it is stated, do not get more on the average than two nights' rest a week, and are obliged during the greater part of that time to take their food cold.

The feeling which prevailed at the time of the finding of the first verdict, that Maguire had been convicted, as he himself phrased it, "on a mistaken identity," is leading to the adoption of active measures. Two or three days ago, a letter was published from Mr. E. W. Watkin, member of Parliament for Stockport, offering a contribution of twenty-five pounds towards any fund that might be formed for the purpose of covering the necessary expenses of any movement set on foot with the object of procuring Maguire's release. To-day an influential meeting was held in one of the committee rooms of the town hall, and it is a fact worthy of notice, as showing the uncertainty of the movement, that the first three signatures appended to the circular convening the meeting were those of the proprietors of each of the Manchester daily papers, representing three widely differing phases of political opinion. The draught of a memorial to the home secretary was submitted, setting forth the following among other grounds of belief that the case was one of mistaken identity: 1. The prisoner's previous life and conduct showed him to be altogether unconnected with the Fenian movement. 2. He was not taken on the spot nor in pursuit after the outrage. 3. His conduct during the trial, when he kept entirely aloof from the other prisoners. 4. His own words after conviction, which appeared to produce a deep impression on all who heard them. 5. The respectability and consistency of the evidence of the *alibi*. 6. The further testimony obtained since the trial, and which appeared to establish more completely the general presumption in favor of the prisoner's innocence. The meeting adopted the memorial, and also appointed a committee to put into proper shape all the evidence in the prisoner's favor, and to seek an interview with Mr. Justice Blackburn to present the memorial. The following were appointed to be the committee: Mr. R. Worthington, Mr. Watkin, M. P., Mr. J. W. Machure, Mr. J. E. Taylor, Dr. Watts, Mr. H. J. Leppoe, Mr. A. Ireland, Mr. Darbishire, Mr. Somler, Mr. Richardson, (solicitor,) and Mr. Herford.

[From the London Times, November 11, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

At the sitting of the court, this morning at 9 o'clock, Thomas Scalley, Michael Joseph Boylan, Henry Wilson, Michael Kennedy, Michael Maguire, William Murphy, and Patrick Kelly were placed in the dock.

Before their trial was proceeded with, Mr. Pickering, Q. C., referring to the verdict of

guilty delivered against three other prisoners late the previous night, drew the attention of the court to the joint effect of the 24th and 25th of Victoria, cap. 100, sect. 47, as amended by the 27th and 28th of Victoria, under which, whenever any person should be convicted upon an indictment for any assault occasioning actual bodily harm he should be liable, at the discretion of the court, to be kept in penal servitude for a term of five years, or to be imprisoned for any term not exceeding two years, with or without hard labor; and whenever any person should be convicted upon an indictment for a common assault he should be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labor.

Mr. Justice Blackburn intimated that he should not deliver judgment until all the prisoners had been tried.

Mr. Pickering then stated that of the prisoners in the dock there were three—Boylan, Maguire, and Kelly—against whom the Crown would not offer any evidence.

Mr. Justice Blackburn said that a *nolle prosequi* would be entered against those three, who would then become entitled to their discharge.

Mr. Cottingham, on behalf of Boylan, asked that he might be formally acquitted.

Mr. Justice Blackburn said the *nolle prosequi* equally permitted the discharge of the prisoner.

Mr. COTTINGHAM. Yes; but they might again prefer an indictment against him.

Mr. Justice Blackburn said such a course would be perfectly legal, but hardly probable. The men might be immediately discharged.

Boylan, speaking for himself, said he ought to have been discharged long ago.

All three prisoners were then discharged.

An application was made by Mr. Jones and Mr. Cottingham that the costs of witnesses summoned for the discharged prisoners might be allowed.

Mr. Justice Blackburn said the application was one requiring some consideration. It could be made more conveniently at the chambers in London.

The remaining prisoners included in the indictment, viz., Scalley, Wilson, Kennedy, and Murphy, were then formally arraigned.

Mr. Pickering, Q. C., Mr. Sowler, Q. C., and Mr. Higgin appeared for the prosecution; Mr. Ernest Jones (with whom Mr. Blain now appeared) defended Scalley and Wilson; Mr. Cottingham defended Kennedy and Murphy.

Mr. Pickering stated the case for the prosecution, and at the conclusion of his remarks several witnesses were called, as in the former cases, to give formal evidence of the attack upon the police van. Among the additional evidence given was that of Constable Yarwood, who spoke to seeing Wilson standing near the side arch as they were driving through, but apparently as a mere spectator. William Hughes, the young man who was at the photographer's, saw Wilson loitering about the Hyde-road inn for about an hour, from half-past 11; he also saw Scalley running away at the finish with the men who came out of the van—a few yards behind them. He went over the line. The boy George Mulholland spoke to Scalley as being in the centre of the road at the back of the van, and said he fired at Police Constable Trueman with a revolver. In cross-examination by Mr. Jones the witness said that shot was the only one fired at that moment. He saw Trueman duck. A dozen shots were fired before the policemen got off. The next witness was Charles Thomas, plumber, who saw Scalley helping to throw stones to smash the van; then saw him run away across the brick-croft. Joshua Munn, the omnibus driver, saw Murphy near the van with the men keeping the crowd back. The other men had revolvers, but Murphy had not. Another witness, James Kennedy, who was in the Railway inn for more than an hour, saw Murphy there; he was reading a newspaper, and invited the witness to drink out of a quart. He did so. Edwin Walton, a shopkeeper, near the Hyde road, identified Murphy as being among those who threw stones to keep back the police and those assisting them. In cross-examination he admitted that he had identified Featherstone at the police station; and afterwards, at the police court, after looking them over, he said he was not there. Witness now admitted that he was confused by being called upon a second time.

Mr. THEODORE FENNEL KIRWIN, house surgeon at the infirmary, deposed to the injuries of Trueman. There was a bruise and extravasated blood.

Inspector GARNER was examined to prove the warrant against Kelly and Deasey.

In answer to a question from the judge, as to whether it was necessary to go into all the evidence on the point again, Mr. Cottingham said he should not require it, because anything these witnesses had said as to a warrant he did not consider could affect the legal question to be raised in London at all.

Police Constable DICKENS again proved seeing Kelly and Deasey go into the prisoner Wilson's house at 3 o'clock on the morning of the 11th of September.

ELIZABETH ROBINSON spoke to seeing the prisoner Kennedy, as she was going towards the arch, fire a revolver during the affray on the 18th ultimo. Could not say which way he pointed the revolver, but thought it was more towards Bellevue than Manchester. She was about a yard and a half from him when he fired.

By Mr. COTTINGHAM: It was not the first shot she heard. Did not know what the firing meant, but got through the arch as quickly as possible afterwards.

Police Constable DRYSDALE apprehended Murphy in Hardman street, and found a number of newspapers in his bed-room. This was on the 26th of September.

Mr. Cottingham objected to the papers being put in, and the judge thought it was better not.

The case for the prosecution was then closed.

Mr. Ernest Jones asked if he might not be relieved of the case against Wilson. The only evidence against him was that of Yarwood, who saw him standing on the footpath near the arch, like any ordinary looker-on, and the evidence of Hughes, who had seen him in the neighborhood, at the Hyde-road inn, at half past 11 on the same day.

Mr. Pickering said the only other evidence against the prisoner was that of Police Constable Dickens.

Mr. Justice Blackburn said that evidence, at the utmost, came to this—that Wilson was a friend of Kelly and Deasey, and might, therefore, have been disposed to rescue them. He did not think there was evidence he could leave to the jury in the case of Wilson.

Mr. Cottingham then submitted that there was not sufficient evidence against Kennedy. The only witness who identified him was Elizabeth Robinson.

His lordship said he should not think it unsafe to leave to the jury to decide whether that one witness, a credible witness, might be relied upon. It was entirely a question for the prosecution whether on that evidence alone they would submit the case to the jury.

Mr. Ernest Jones then addressed the jury. He said, being relieved of the case against Wilson, he would at present merely indicate the nature of his *alibi* in favor of Scalley. He should call respectable witnesses to prove that Scalley was at work, tailoring, at the time of the outrage. These witnesses could not possibly be mistaken; they must either speak the truth in this matter or be perjuring themselves.

WILLIAM AINSWORTH, master tailor, said he lived at 10 Bootle street, near Peter street, two miles from the arch in Hyde road. He had known the prisoner Scalley twelve months. In consequence of requiring extra assistance, he sent his wife with a message at 9 o'clock in the morning, and Scalley, who is a tailor, came at 9.30 and worked for witness on that day (the 18th) till a few minutes before 8 in the evening. He worked on the same board with witness. He went out to dinner at 1 o'clock and returned at a quarter to 2, and from that time he did not leave his work again during the afternoon.

Cross-examined: Did not remember sending for any man before to assist, except that he sent several times to a man named Kelly for the loan of a man, but did not get one. Remembered sending to a tailor named Seymour for the loan of Scalley a fortnight before the 18th. Scalley then came and worked for him three days in one week. Would not be positive whether before the magistrates he said two or three days. The witness was closely questioned as to how the pressure of business came upon him, to require the assistance of Scalley, and he gave particulars. Scalley always had 3s. 6d. a day when he worked for witness. Witness did not pay him on this occasion.

MARY AINSWORTH, examined by Mr. Blair, said she was the wife of the last witness. Her evidence was corroborative of that given by her husband. She was helping him and Scalley in their work in the same room the whole day on the 18th.

In consequence of the interruptions caused by persons coughing in the court, Mr. Justice Blackburn said: I must again request persons who cannot suppress their coughs to leave the court. It will be good for their health that they should be away, and it is absolutely necessary for the progress of business.

MARY JANE WILSON, a young woman who lived at 12 Clopton street, Hulme, said she knew Scalley a little. On the 18th of September saw him for the first time. It was at Mr. Ainsworth's, about 3 o'clock. Witness remained there till 5 o'clock, and Scalley was there all the time, working. Ainsworth and his wife were both working with him.

Cross-examined: Mr. Ainsworth, who was her uncle, asked her to give evidence. It was one day during the week after the 18th.

JOHN SEYMOUR, tailor, deposed that he had sent Scalley to Ainsworth to help him on the 18th, as the previous witness had stated. Scalley had worked for witness regularly for the last two years.

This was the case for the defence of Scalley.

The jury were then directed to acquit Henry Wilson, his lordship remarking that the evidence went no further than to point suspicion against him. Wilson was then discharged from custody.

Mr. Cottingham then addressed the jury for Kennedy and Murphy. He characterized the evidence against them as the weakest he ever knew to support a criminal charge. Against Kennedy there was but one witness, a young lady, who could but have had a momentary glance at the man whom she thought she identified. Against Murphy there were only three witnesses, one of whom, at least, gave his evidence in a manner that was not calculated to give it much weight. In favor of each of his clients the learned counsel said he had to produce an array of witnesses for *alibi* whose testimony had been in the possession of the prosecutor for weeks past, to sift and rip to pieces if it were possible.

The court adjourned till 10 o'clock on Monday, when Mr. Cottingham will call his witnesses.

[From the London Times, November 12, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, Monday.

The court sat at 10 o'clock, and before the business of the day was entered upon,

Mr. Justice Blackburn said he had considered the application made on Saturday afternoon by counsel representing the prisoners, that the expenses of witnesses for those prisoners who had been acquitted might be allowed. That application was made under a misapprehension of the act. The court was to inform itself as to the character of the evidence given. If the court thought the witness had come honestly and given evidence, and was a proper and worthy witness, even though the prisoners were convicted, the witness was to have his costs; but if the court did not think so, even though the prisoner was acquitted, the witness would not be allowed his costs. The legislature in passing this act contemplated ordinary cases where only a few witnesses were required, but in a case like this, where there were some 70 or 80 witnesses, the machinery broke down. In such a case as this it was utterly impossible to form an opinion on the nature of evidence he had not heard *viva voce*, and, therefore, he could not see how to grant costs in the cases where the witness had not been called. Witnesses' expenses were to be paid to the witnesses themselves, or to the person whom they might authorize. The attorney, as the prisoner's attorney, had nothing to do with it; but if the witness chose to give the attorney or any other person authority to receive the money he could do so. It was the first case which had arisen under the new act, and, strictly speaking, the application ought to be decided at the time; but as there would be great inconvenience, amounting to impracticability, in doing this in the present case before the court adjourned, he proposed to consider the application subsequently in town. The expenses to be allowed were left entirely at the discretion of the judge, but in this instance there were hardly any materials for forming an opinion as to the honesty or otherwise of the witnesses who were summoned exclusively to prove *alibis*. The witnesses would have to satisfy Mr. Shuttleworth, the registrar, that their claim was a proper one, and the rule in ascertaining the amount to which they were entitled for their personal attendance and loss of time would be "compensation, not profit." A reasonable time, two days after the commission adjourned, would be allowed for that purpose, and then the learned judge said he would consult his brother Mellor, who had co-jurisdiction with him in everything relating to the commission, as to the order which should be made. He did not intend that the course he was now announcing should be drawn into a precedent in any way; in fact, the irregularity involved was such that the corporation and the government, if they were shabby enough to do so, might, perhaps, refuse to carry out the orders which the court made. But he did not entertain the least doubt that under the peculiar circumstances both the Manchester corporation and the government would give effect to his directions on the point without any quibbling whatever.

The trial of Thomas Scalley, Michael Kennedy, and William Murphy was then resumed; and Mr. Cottingham proceeded to call witnesses on behalf of Kennedy.

MICHAEL DALTON, beer and provision dealer, deposed that he knew the prisoner Kennedy, who was a cane-dresser for the manufacture of crinolines. He worked for himself lately, but before that used to work for a Mr. Chapman. At 2 o'clock Kennedy came to witness's establishment, and was served with two glasses of bitter ale. Kennedy came in by himself first, but a young man named Neary came in, just momentarily along with him, and Kennedy called for a glass for him too. Kennedy did not leave again till 11 o'clock, just closing time, and witness told him he ought to go. Except he may have gone into the back yard, Kennedy did not leave all that day. About 3 o'clock a man came with potatoes. These witness had bought from a man named Frett, of Stockport; understood it was the son came with them, but was not acquainted with him before. Cotton, a provision dealer, was getting part of the potatoes that day. They joined the company after getting in the potatoes. While they were sitting down a woman named McKeown just came to the door-step and said there had been an occurrence in the Hyde road—"a policeman shot, or something o' that sort."

Cross-examined by Mr. PICKERING: Had known Kennedy 16 or 17 years. Witness had only the beer-house about nine months, but had carried on the provision business for 20 years in the neighborhood before. Kennedy had often been in his house; could not say whether he had ever stopped nine hours before. Kennedy and Neary were friends, and had been there together on previous occasions. Later in the day Kennedy, Cotton, and young Mr. Frett each ordered and paid for half a gallon of beer. Cotton and Frett went away at 7 o'clock; after that Kennedy and Neary went into another apartment, the kitchen. The reason was because a fiddle-player came in, and they would not be allowed to play there, so they went into the kitchen. There were some clothes (*i. e.*, carpets) laid down in the parlor, and they would rather dance where there were not any. They were going to dance, and did dance; they enjoyed themselves very much up to 11 o'clock. Could not say how many there were; they came in one by one afterwards—there might be a dozen. Could not say whether Kennedy danced or not; don't think he is a man of that sort. There were some

women too; there was a Mrs. Thompkinson came in; could not say whether she danced; there might be five or six others. Could hardly give an account; when a person is busy serving, you cannot keep a right observation of who goes in and out. Neary's sister danced, perhaps, also a Miss Feeny. Kennedy's brother was there. There was a young man named Feeny; they all stayed there till he told them it was turning-out time, fiddler and all. McKeown did not wait long; he did not say many words. Believed that "his missis" told the men in the parlor before he did about what McKeown had said; but there were several tellings in an hour or two; it wasn't the same tale at all as at first; it was a regular conversation before the night was over.

Re-examined: Had told all this before the magistrates.

HENRY COTTON, provision dealer, deposed that he was at the house of the last witness on the 18th of September about some potatoes. Kennedy, with another young man, was there when he went in. The man who bought the potatoes and Mr. Dalton's son helped to unload them; when this was done they all went into the same room, where Kennedy and his friend were sitting, and drank some ale together. While they were in the parlor a man came in and said, "The prison van had been attacked." That was about 6 o'clock. Did not know who mentioned it. It would be before 6 o'clock if any. Witness was in the wholesale business. Had carried on provision dealing for about eleven years.

Cross-examined: Had bought potatoes jointly with Dalton before. Was to have three loads in all out of fifteen on that occasion. Made the arrangement that forenoon, and accordingly went to Dalton's about 3 o'clock. The potatoes had not arrived when he got there. The potatoes came between 3 and half past 3 o'clock. They went out to assist in unloading them. Did not take home his share of the potatoes; shot them into other bags. Left all the rest behind him when he went away about 7 o'clock. A strange man, whose name he did not know, came into the parlor and had some drink.

By a JURY: Could not say exactly how much ale was had in; paid for half a gallon himself, and the man who bought the potatoes paid for one. Some more was paid for, but he did not know by whom. There were three half gallons came in altogether.

ELIZABETH CHAPMAN, wife of a cane-dresser, said the prisoner had worked for her husband sixteen or eighteen years. Between 12 and 1 o'clock on the 18th of September he was at her house. He was a decent, well-conducted man.

THOMAS NEARY, who described himself as a laboring man, but was respectably dressed in black cloth clothes, deposed that he went to Dalton's beer-house at 2 o'clock on the 18th of September and remained till 11 at night. Kennedy was there all the time, and could not have gone out for more than a few minutes without his being aware of it. In other respects the witness gave an account tallying with that of the previous witnesses.

Cross-examined: Saw Mr. Dalton that evening there after 7 o'clock. Would not swear that a strange man or men might not have come into the parlor and had something to drink, but would not swear to it. Was there when the fiddler came. Could not say what made him and Kennedy leave the parlor and go into the kitchen. There were a good many men and women in the kitchen. Witness danced sometimes—did his best. [Laughter.] Witness's sister was there and others. The other women danced in their turn. John Kennedy and Pat Feeny were among those present. Had never danced there before. Did not remember when last he was at the beer-house previously. Often went there.

CATHARINE DALTON, wife of the first witness, gave corroborative testimony.

Cross-examined: When the neighboring man came in he said, "There was a great accident happened at Hyde road." Could not hear particular what he said, as there were neighbors coming in for some stuff, me being in the provision line. Being so very busy in the shop I could not tell whether I went into the parlor to serve drink or not. When a person has a dale to do they cannot pass remarks. Cotton came at 3 o'clock. Whether the fiddler came before he went or after I cannot say which. I didn't take notice of the fiddler till he was in a bit. There's a many a one comes in and out when you are serving customers. First seen the fiddler about 8 o'clock, but I cannot say to a minute or two. He might be there, but I cannot say more. My son had been out with our cart; he came in about 3. I cannot say whether he went into the parlor or not. He was busy with our cart. I cannot say what he did with the farmer's cart. I don't know whether Mr. Cotton took his "platees" away that day or next. I don't interfere with men's business. The fiddler has been at our house before—not so very often. He might have been more than once before. [This witness spoke with such volubility as utterly to baffle the pens of the judge and official shorthand writer.]

This closed the evidence on behalf of Kennedy. The following witnesses were then called on for the defence of Murphy.

MICHAEL MAHON deposed that he was a bootmaker, but did not do anything on his own account. He worked as a journeyman, and was secretary of the Bootmakers' Society. Murphy had lodged with him from four to five months before his arrest, and had known him five or six years previously. Murphy was a bootmaker, and worked for Mr. Sheridan, of Chapel-walk. Did his work at home. Murphy and witness dined together at 1 o'clock; then Murphy went up stairs to his work, and he did not come down till he came down to his tea between 4 and half past 4 o'clock. Witness was in the house till 5 o'clock, and Murphy could not have gone out without his knowing it. The workshop was at the top of the house; four

men worked it for different employers, and boarded with witness. The men's names were John Buchanan, Samuel Simcox, Thomas Green, and Thomas Thorp. The prisoner usually wore a blue velvet cap. After tea witness did not see him again till supper time, having gone out on some business. He then had supper with him also. All the men except Green, who did not board with witness, ate together. His wife got the meals ready, but dined by herself after. All the other men attended as witnesses, but Thorp has no speech; he had no palate to his mouth, and you could not understand what he said.

Cross-examined: Green, who did not board with witness, was what was called "a sitter;" he did his work there. Murphy, when he had done his work or wanted more, had to go to shop with it. Never asked any of the men where they were going to when they went out. Murphy and Simcox had gone out in the forenoon of the 18th, and came back again between 12 and 1, just as dinner was getting ready. They might have been out an hour or two. Did not work actively at bootmaking now; was allowed 26s. a week by the society. It was a trade society. Had to look after the accounts—the accounts of 400 men—and to look after defaulters. Was not and never had been secretary to any other society. Did not keep the accounts of any other society. Kept the books of the society at his house; devoted some days to the books, and other days he had to go out. Members generally brought him their subscriptions, but if they did not he had to look after them. Some months they made good payments and others not. When they made bad payments they wanted more looking after. Did not go out that day, as he had some letters to write. Wrote them in the parlor—four in all; that was what kept him at home. Wrote some to Liverpool and some to Newcastle-on-Tyne, and some to London. Witness added: I think I sent one to London. I could not exactly swear where I sent them. Every letter I write I keep a minute of. I sent one to Liverpool. Any letters I send to Liverpool I send to Mr. Clark, the secretary of the bootmakers there. I will swear I wrote letters that day, but I will not swear that I sent one to Liverpool. I mostly write one letter at least every day. Went up and down stairs every day to have a chat and read the paper. In our house we take thirteen a week. We take the Guardian for one, Reynolds's paper for another, and the sporting papers.

MR. PICKERING. Do you take in the Irishman?

WITNESS. I do, sir.

MR. PICKERING. And are these papers taken into the common room up stairs among the men?

WITNESS. They are. I always have taken in the Irishman and always will while it is published. I have never taken in the Fenian Volunteer. Any of the men read these papers if they like. I have read to them once or twice, but not often. It always has been my habit to go up stairs to read the paper to them or to myself.

Re-examined by MR. COTTINGHAM: The Irishman has a very extensive circulation in Manchester and in Dublin.

MR. COTTINGHAM. Is there the slightest ground for imputing to you that you are a Fenian?

WITNESS. I never saw one in my life.

MR. COTTINGHAM. I mean, for saying that you yourself are connected with the Fenian movement?

WITNESS. I know nothing about it.

MR. JUSTICE BLACKBURN. That there may be no mistake about the matter, have you read this paper, the Irishman, to the men working in your house?

WITNESS. I have read all the papers.

MR. JUSTICE BLACKBURN. Do you know the paper I mean?

WITNESS. Yes, my lord.

MR. JUSTICE BLACKBURN. I never saw the Irishman in my life; but what I want to know is, in order that there may be no mistake, is this Irishman a paper that advocates the views of the Fenians?

WITNESS. I don't know much about that.

MR. JUSTICE BLACKBURN. Do you mean to say that you read the Irishman to the men without knowing whether the principles which the paper advocates are those of the Fenians or not?

WITNESS. I don't think it does.

The judge asked that a copy of the Irishman might be produced, and one was accordingly sent for.

The judge intimated that some further questions must be put on this point.

JOHN BUCHANAN, one of the men lodging and working at the house of the last witness, deposed that on the 18th of September the dinner was between 12 and half-past 12, and the usual number dined at it. They were Simcox, Mrs. Mahon, the prisoner Murphy, and Thomas Thorp. Mrs. Mahon sat at the table with them; she got up and sat down again when attending upon them. Murphy was in his company all that day, and did not go out between dinner and tea.

Cross-examined by MR. PICKERING: Witness was a Scotchman. Could not say whether Murphy had done any work that day before breakfast or not. Murphy was very bad in health, and sometimes did not get up before breakfast. Could positively say that Murphy was at work at 10 that morning; about half past 10 he went out to shop, and did not come back for two hours. Never was in the habit of reading papers to the other men. The man at whose house he lodged did not do so habitually; he did not come for that purpose regu-

larly, but, perhaps, two or three times a week, sometimes every day. The papers which they got were the Guardian, every day; and sometimes the Sporting Times. That was all. He subscribed for the papers which were got in. These were the only papers read—by that he meant read out, or read by witness himself. Was sure those were the only papers. There were no other papers there besides those he had mentioned. If there were others he had never read them. Had seen other papers—had seen the Irishman; nothing more that he could remember. Had not seen the Fenian Volunteer.

Re-examined by Mr. COTTINGHAM: Is there any pretence for saying that you, a Scotchman, are a Fenian, Mr. Buchanan, eh?

WITNESS. No, sir.

You say that Murphy has been for some time in bad health and not able to get up early?

WITNESS. I do, sir.

SAMUEL SIMCOX, another of the men lodging and working at the witness Mahon's, deposed that the prisoner Murphy worked in his company from half past 12 o'clock till they went to bed; except at meal times he was never out of his company that day. They had tea about half past 4 o'clock.

Cross-examined: Slept in the same room with Murphy. Did not begin work till 9 o'clock that morning; breakfasted about 9. Got up half an hour before. Murphy was up before witness; he was asleep when Murphy got up. He had been to shop for his work when witness got up. The first time witness saw him that morning was in the street; they walked home together at 12 o'clock; lit on him accidentally in the street. Murphy did not breakfast with witness that morning; could not remember who did. Murphy did not go out on the afternoon of the 18th; could not say whether he went out on the afternoon of any other day that week.

THOMAS GREEN, who also worked at Mahon's, deposed that he was at work on the 18th of September from 10 in the morning till half past 10 at night. Murphy was there from half past 12 in the day till he left off at night. Witness went out for his own meals; he was from the north of Ireland. When witness went to his tea at half past 4 o'clock Murphy was sitting at work; their seats were so close together that they could almost touch each other.

Cross-examined: Had no regular time for going to work; went that morning at ten. Simcox was there when witness went in on the morning of the 18th; he was reading the paper. Sometimes he read out, and sometimes to himself. Simcox went out about eleven, and came back before twelve; he came back before Murphy, who returned about half-past twelve to the garret, but he might have been down stairs for all witness knew.

Re-examined: Had no doubt whatever that the prisoner was working beside him all that day.

HANNAH MAHON, wife of Michael Mahon, deposed that the prisoner worked all day, and had his meals with the rest on the 18th of September. Witness was in the house all the time on that day, and nobody could have gone up stairs or down without her seeing him. To get out the prisoner must have passed the kitchen door; he did not do so that afternoon. He went out in the morning, and came back about half-past twelve with another man, Samuel Simcox. Mary Jervis, a neighbor, came to their house frequently; she called on the 18th about half-past three, and remained till 6. Was in the room where the others had tea. Witness got her dinner at the same time as the rest, but, of course, if anything was wanted she got up and handed it. Her husband went up stairs for a short time that afternoon to read the papers: did not pay any particular attention to what he was doing; if any one came in to pay money he was there to give him a receipt.

Cross-examined: Was very seldom out of the house; did not notice what time he went out, but saw when he came in. Did not notice any one else in particular go out of the house that morning before dinner, there are so many go in and out. Her husband was in and out that day; his business caused him to go in and out. Her husband was out that morning about eleven, and staid till dinner time, and was reading all the afternoon. He wrote down stairs in the parlor. He was writing in a book, perhaps for half an hour. With the exception of the half-hour that he was down stairs, he was up stairs reading till he got his tea, at half-past four—reading newspapers, she supposed. His occupation took him out a good deal, but he could not have been out much that day, at that rate. On Tuesday he was in doors all the afternoon, writing. On the Monday he was in and out. Had not seen Murphy and Mary Jervis particularly together.

Re-examined: Could not tell what her husband was writing, except that he had a book before him.

MARY JERVIS deposed that she lived with her father, who was a shoemaker. Called on Mrs. Mahon at half-past three o'clock on the 18th of September, and remained till six o'clock. Murphy was there with the rest. Had known him close on eighteen months. He lived opposite her father's house before he went to the Mahons'. Had known Mrs. Mahon there many years.

Mr. COTTINGHAM. Now, was it to see Murphy or Mrs. Mahon, that you went?

WITNESS. Well, indeed, it was to see no one.

Mr. COTTINGHAM. Was it just to pass the time?

WITNESS. Just to pass the time. Did not go up stairs at all. Had given the same evidence before the magistrates.

Cross-examined: Her own occupation was that of a machinist; was out of work because of the slackness of business. Was out of work for three weeks, she and two other men. [Laughter.] Left the same occupation the Saturday previous. Did not take tea with the Mahons that afternoon. She went in so often that they would have something to do to give her tea every time she went. Had never walked out with Murphy; they might happen to be going out of the door at the same time; he had never courted her. Had collected money for her father several times; for no one else. He was a bootmaker. The money she collected was for the chapel. He collected money for the debt of the church. Was quite sure she had never collected money for any other purpose.

Re-examined: I could not be mistaken about Murphy being there at tea.

To Mr. Justice BLACKBURN: My attention was first particularly called to the matter by Murphy's having been arrested on the 26th. I cannot assign any other reason for distinguishing between the 18th and any other evening that I was at tea at Mahon's.

JAMES SHERIDAN, master bootmaker, carrying on business at Chapel Walk, deposed that the prisoner Murphy worked for his establishment, and had work out on the 18th of September. Murphy had worked for him nearly eighteen months, and was rather above the average of the bootmakers. The average of the bootmakers generally drank, and he had never seen the sign of drink upon Murphy.

This closed the case for Murphy. Copies of the *Irishman* having been procured, the judge expressed a strong desire to have some of the witnesses for the defence recalled, but it appeared that they were no longer in attendance. In their absence, and until they could be sent up,

Mr. Ernest Jones consented to sum up the evidence given on behalf of Scalley, and in the course of his remarks contended strongly that the prisoner was being sacrificed to his likeness to Gould.

The witness Mahon was then recalled, and copies of the *Irishman* being handed to him by Mr. Pickering, he said he had seen similar ones at the house, but could not say that they were the same. He repeated that he did not know they advocated Fenianism. He read them for Irish news. He did not take the paper for the purpose of seeing its advocacy of Fenianism. The *Fenian Volunteer* was handed to the witness, and he said he never remembered seeing a paper of that name before.

By Mr. COTTINGHAM: Had had other lodgers before Murphy came. A man named Green left, and Murphy came in his place.

JAMES MAHER, the foreman, proved that Murphy had work out for Mr. Sheridan, bootmaker, at the time in question. He came for his work in the forenoon between ten and eleven on the 18th of September. The entry of it was in the book which the witness had brought with him. The entry was made by his employer. Witness remembered seeing him make the entry on that day. To the best of witness's knowledge Murphy was a well-conducted man. He was in bad health at the time.

Cross-examined: Witness gave Murphy the boots on that day. Could not remember whether Murphy brought anything in when he took the boots.

The newspapers were handed to the judge, who remarked to the jury, after looking over them, that he did not light upon any passage that seemed to show the paper advocated Fenianism.

Mr. Cottingham remarked that the paper was not likely to have been much of a Fenian advocate, or it would have been suppressed long ago.

Mr. Justice Blackburn said Mr. Cottingham must know that there was no power to suppress a newspaper in any part of the British dominions.

Mr. Cottingham said that in Ireland at present the government had abundant power to arrest the editor, sub-editor, and printer, or any one else connected with a paper.

Mr. Justice BLACKBURN: You are perfectly aware that no such thing would ever be permitted.

Mr. COTTINGHAM. As I understand, the government have that power.

Mr. Pickering (after five minutes' delay allowed for the purpose) directed Mr. Cottingham's attention to certain passages in the paper which seemed to implicate it, and which would be shown to the jury.

Mr. Cottingham, having been put in possession of this evidence, was proceeding to address the jury for his clients when our report was despatched.

[By telegraph.]

The trial was concluded this evening. Mr. Justice Blackburn finished summing up at a quarter past eight. The jury, after an hour's deliberation, *convicted* Scalley and Murphy, and *acquitted* Kennedy on the ground of insufficiency of evidence. Sentence deferred.

[From the London Times, November 13, 1867.]

THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, Tuesday.

Mr. COTTINGHAM, who was addressing the jury on behalf of Kennedy and Murphy when our report was despatched yesterday evening, proceeded to refer to the remarks that had

been made as to the character of the *Irishman* newspaper, which was found in the possession of one of the prisoners, and was taken in by one of the witnesses for the defence. He was extremely sorry that a matter so extraneous to this inquiry had been introduced by the prosecution. The jury had not been impanelled to try the question of Fenianism or non-Fenianism. They were there to inquire into the innocence or guilt of the men before them, who were charged in this indictment for assaulting certain persons and doing certain injuries, and not as to what might be said of certain witnesses who had been called before them—whether they entertained certain opinions with respect to Ireland; whether they had what were called Fenian proclivities. This would have no other effect than that of prejudicing their minds. It was to pay their honesty a bad compliment to think that the jury would allow their judgment in this case to be influenced by whether or not a paper advocating such principles was in the possession of one of the witnesses. No doubt there was an extensive sympathy with what was called Fenianism among a numerous mass of the Irish population; there would, therefore, be a great deal of interest, if not curiosity, as to what was going on with reference to that question, which was one of the most exciting topics of the day. There were papers in large circulation, read by many people, not as sympathizers, but because they afforded means of information on this topic; and it was the more worthy of note that these papers were circulated in the face of the government, with the most complete impunity, because the first state trial in Ireland was against newspapers, so jealous were the government of anything like a newspaper urging and advising treasonable ideas, or exciting to treasonable combination, and therefore it could not be supposed that any paper disseminating treasonable ideas, or fomenting treasonable ideas throughout Ireland, would be allowed to exist for a single week. It might be difficult in England to suppress a newspaper, but the Irish government had extraordinary powers, and had a perfect right to arrest anybody without bringing them to trial, and keep them in prison as long as they chose. If this *Irishman* was such a paper, with such an immense circulation, would the Irish government stand calmly by and allow such a mischievous production to continue to circulate, especially when they had such a power as the suspension of the *habeas corpus* act, which was equivalent to a suspension of the constitution? This matter was, however, only introduced into the case for the purpose of touching the credit of the witness Mahon, and they were actually told that because this man was found to have had papers in his possession sympathizing with Fenianism, therefore his testimony was not to be believed, and he must be a perjurer. These papers contained news of the Fenian movement, letters from America, and other similar matters; and it was possible for a person to read them without being therefore supposed to be connected with Fenian or treasonable designs. The learned counsel then went on to argue that, even admitting this, it could only affect the testimony of Mahon, and would not weigh on the merits of the case. It was surely no evidence against the prisoner that these papers were found, for there were many lodgers, and he was not responsible for what was found in the house.

Mr. Pickering, Q. C., replied on behalf of the Crown. He suggested, with reference to the *alibi*, that if three men could preconcert an outrage, it would be as easy for them to preconcert an *alibi* as the means of defeating justice. Commenting on the evidence of Mahon, he said the story had struck him as extraordinary altogether, and it was for them to believe his story, or whether the contradictions rendered his evidence unreliable.

The JUDGE. You have pointed out nothing about those copies of the *Irishman*.

Mr. Pickering thought it would be fairest for the jury to look at the copies of the papers.

Mr. Justice Blackburn wished that Mr. Pickering had told him this before, as had he known it, he should have looked through the papers to see whether there was anything in them to which the attention of the jury should be called. As it was, he must leave them with the jury. His lordship then summed up the case. He said the question was as to the share of each prisoner in transactions which had been sufficiently proved. If the jury was satisfied that he was aiding and assisting the persons who actually threw the stones and committed the violence, then they must bring him in guilty; but they must be careful to consider each case as distinct. He then commented on the evidence as it bore on each prisoner, and then observed that there was one thing which they would have particularly to consider. When the policeman took Murphy into custody he swore he found certain papers. The counsel for the prosecution said that these papers would be evidence against him, and they had handed them to him for him to decide whether they were such papers as they said they were. He agreed that such a newspaper would have some tendency towards showing that the people who had it at least read Fenian literature. He thought that they had better not put it in at the time of the evidence in chief, because it might prejudice the case. He had since considered the matter more calmly, and thought it would be liable to prejudice the jury to a certain extent; but if they could show that the crime was committed by a particular class it was one step, but a slight one, towards showing the prisoner's connection with it. Still, if he belonged to that class it did not prove him guilty. The Fenians, unfortunately, were a great deal more numerous than those who could possibly have been at the outrage. All the people at the outrage might have Fenian propensities, but a great many people who had Fenian propensities were not there. This, however, tended to show that the prisoner was one of that class likely to be there. They should not, however, carry it further, and they should be extremely cautious what weight they gave to it. There could

be no doubt that when witnesses for the defence were called, it would tend to their discredit if they were shown to be Fenians, not that by any means he thought that every Fenian would be a person who would tell a falsehood. Fenianism was a crime, a folly, a weakness, but it was not connected with meanness. It was not a mean crime, though a weak one, and he had no doubt that some of these misguided Fenians would scorn to tell a lie. At the same time, those animated by a strong political feeling had a greater temptation to tell a falsehood. It was so far material for them to consider how far Fenian associations affected a witness's credit. They must consider how far a man taking in that newspaper would be so tainted with Fenianism as to cause them to look upon his evidence with suspicion. They must weigh this matter very cautiously, and consider how far that connection with Fenianism would induce a man to come and speak falsely to serve a friend. Subsequently his lordship said he did not think he should do any good by commenting upon the contents of the *Irishman*; the two papers would be handed to the jury to look over for themselves, to consider whether they afforded evidence that the man who had them was of Fenian propensities. If so, it tended, not by itself to convict a man, but to fortify the suspicion against him, rendering the jury more ready to believe the witnesses who said he was present at the attack. But they must take care they did not allow themselves to be influenced further than to that extent. His lordship's recapitulation of the evidence on both sides, with the addition of the foregoing comments, occupied about the same time as the summing up in the previous trials, viz., two and a half hours.

At a quarter past 8 o'clock the jury retired to consider their verdict. The result was stated by a telegram in the Times of this morning, the acquittal of Kennedy and conviction of Murphy and Scalley. The judge was not in court when the verdict was delivered, and sentence was consequently deferred, like the sentence in the case of the prisoners previously convicted of riot.

At 9 o'clock this morning the court entered upon the last of the many investigations arising out of the memorable affray of the 18th of September. Of the twenty-six prisoners awaiting their trial at the commencement of the special assize only seven now remained whose cases had not been disposed of. These were all put forward as soon as Mr. Justice Blackburn took his seat upon the bench, and a *notte prosequi* was entered in the case of the following five: William Martin, John Francis Nugent, Michael Coffey, John Bacon, and William J. Brophy. The discharge of these prisoners was directed by the judge, and accordingly took place; in Nugent's case, however, his period of freedom was the shortest, for he was immediately rearrested upon a warrant from Ireland, charging him with complicity with the Fenian movement. The arrest was made by head constables Welby, Costello, and Egan, of the Irish constabulary, who placed handcuffs on their prisoner, and will set off with him this evening to Drogheda. The charge to be preferred against him will probably take the shape of prison-breaking, as it appears that while in custody on an accusation of Fenianism he took the opportunity of leaping through a window, and escaped.

John Brannon and Timothy Featherstone, the remaining prisoners, who were now indicted for riot, assaulting the police, and preventing the arrest of Kelly and Deasy, were included in the second batch of five prisoners, who, it will be remembered, were tried and acquitted upon the charge of "wilful murder." They pleaded "Not guilty" to the present indictment also.

Mr. Pickering, Q. C., Mr. Souter, Q. C., and Mr. Higgin, prosecuted; Mr. Cottingham defended Featherstone, and Mr. Jones was counsel for Brannon.

Mr. Pickering stated the case for the Crown, recapitulating the facts with which the public are already so well acquainted, and charging specially against these prisoners that Brannon had attempted to break in the van with stones, and that Featherstone was active in keeping back the police officers and those assisting them.

The formal evidence was read over to the jury from the judge's notes, and the following additional evidence was adduced:

TIMOTHY McNAMAR, shoemaker, deposed that the prisoner Featherstone had lodged with him for five months before the 18th of September. First saw him on that day about half-past 11 o'clock. Featherstone went out about 12 o'clock, and on his return, between 4 and 5 o'clock, witness addressing him, said, "If I were out all day like you, I would be drunk; but there's not a sign of drink in you." Featherstone went on with his work, and in about an hour, witness having noticed a change in him, the prisoner said, in explanation, "It's not when I drink that it takes an effect on me, but a good while after." When witness saw him on the evening of the 18th of September he had a longer beard than at present, and also a moustache; his beard would be very nigh half as long again. Witness went to the play that evening, and next morning, at 8 o'clock, when he saw Featherstone, his beard had been a great deal shortened. His moustache was still on then, but in twenty minutes afterwards he had cut it off.

Cross-examined: This was witness's first appearance at any of these trials, and did not want to give evidence now if he could help it. In all he had lost twenty-three days by these trials. Knew that Featherstone was on his trial for murder last week and acquitted. Never wore a beard or moustache himself, and so could not tell whether they were inconvenient when too long. He was a married man with a family. There were also lodgers in his house,

JOHN HAYES, brickburner, identified Fetherstone as one of those who were at the arch-way keeping the police at bay with stones. He had more hair on at that time.

Cross-examined: Saw Fetherstone running away that day. Had stated that in evidence before; could not say whether at the police office or in this court. [Reference was made to the judge's notes, which corroborated the witness's statement.] Had sworn to the identity of other prisoners, since acquitted. Had said on the former occasion that there were 30 men keeping back the crowd; meant that there were 30 men in all, including those attacking the van with revolvers; but those with revolvers would have run to keep back the crowd, if necessary.

Re-examined: I was not threatened actually by men friends of the prisoners, but friends of mine said "they would not be in my place for £100," and regretted that I was going forward as a witness.

THOMAS HEALY, inspector of gas meters, deposed that he saw the prisoner Featherstone throw large stones at the back of the van. He had at that time more hair about his face.

Cross examined: Fetherstone was the only prisoner to whom witness had ever spoken. When examined on the trial for murder and before the magistrates he had not spoken about Featherstone's beard and moustache.

To the JUDGE: Was never asked about the beard and moustache before, and was not allowed to volunteer the statement. Did not mention at the preliminary examination that he could give evidence on that point.

FRANCES ARMSTRONG gave evidence as to the circumstances under which Sergeant Brett was killed, and further deposed that on getting out of the van she saw Brannon among the crowd. Did not see him do anything.

Cross-examined by Mr. JONES: Was greatly frightened at the time. Brannon was handcuffed when she saw him next. Heard about the reward for Kelly and Deasy, but "never minded my head" about it. Was under remand for 14 days in the van at the time; that was for drink. Was in prison for four months, turned two years ago, for stealing money. Had been in prison two or three times for drink.

THOMAS HINDS, a little boy aged 12, deposed that he saw a man with a revolver pointed at the van, exclaiming, "Stop, or I'll blow your brains out!" Heard a shot afterwards. Brannon was against the horse's side; he was not doing anything. He was the man who cried out to stop. There was a great crowd before the van got up, and Brannon was the first man to run against the horses. Did not stop much longer, for he ran home.

The witness was cross-examined as to alleged discrepancies in his statement, until

The judge said it was evident that the little boy was so confused and frightened that if he were asked now whether he was standing on his head or his heels, he would probably answer that he did not know. The better way was to let him tell his story in his own words.

They did so, and adhered to his former statement very closely.

THOMAS MULHOLLAND, a boy aged 14, identified Brannon as having thrown a big stone at the door of the van.

The judge read from his notes the formal evidence of two witnesses—Dickin and Gardner—which closed the case for the prosecution.

Mr. Jones then addressed the jury on behalf of the prisoner Brannon, explaining the nature of the *alibi* in support of which he intended to call witnesses.

MARY PEEK, a "jack tender," or attendant upon a machine called a "jack," deposed that Brannon was in the clothes line, and was in a respectable way of business. He had four children, and his wife was dead. On the 18th of September witness was not at work, though she worked both the day before and after. At twenty minutes to four, and again at ten minutes past four, that day, she met him in a street in Manchester, where she had gone to look at some bonnets. On the first occasion he was going to the market, and on the other going towards home. Heard the same week that he was taken. She immediately, and without anybody asking her, recollected having seen Brannon on the 18th, and went to the police office and said so. Told the same story to the magistrates, and was cross-examined by that gentleman there, (Mr. Higgin,) who hadn't his wig on then.

Cross-examined by Mr. PICKERING: Was not working that day. A frame had stopped for the day and thrown her and five others idle. It was their turn to stop work. Did not often go to look at bonnets; but had time that day. Her sister two years old was with her. Did not buy bonnets then or since, as she had not been working since. Looked into many shop windows to amuse the child.

Re-examined: Thought of buying a bonnet then because she was in good work, but having stopped away to give evidence at the police court, when she came back her "place was shopped"—i. e., supplied by another.

WILLIAM McCONNELL, chairmaker, deposed that he knew the prisoner Brannon by eyesight, and had been a couple of times in his company. On the 18th of September, at a quarter to four, he went out from his work to see what time it was. The clock was just across the street in a public house, about eight yards from where he worked, and he met Brannon in the street. At five minutes past four he met Brannon again in the next street. Went out the second time to see the time—waiting for tea-time. Did not speak to Brannon either time. Knew Brannon by sight—was looking at him this couple of years. [Laughter.]

Went first to Baily's public house and next to the Hat and Feathers. Just looked at the clock in each case and then left.

Cross-examined : Had met Brannon in the street and at the New Cross arguing. Heard him talking about many things—perhaps how Garibaldi would succeed. [Laughter.] The New Cross is a place where everybody speaks.

In reply to the judge,

Mr. Earnest Jones explained that the New Cross was a place where everybody went. It was a sort of public parliament.

Cross-examination continued : Went to look at the clock every day. When he went to Baily's public house to look in nearly all the people's backs were turned to him. Had gone there the day before. Could not say that he went the day before that ; he could not be continually running, [laughter,] but he went pretty regular. Went to a different place the next time ; did not wish to be running in always to the same place. Did not observe any body's back there ; there was nobody, not even the waiters. Brannon was not going the same way as witness. Brannon was going down the street, and witness just "tuk a skip across." He was walking slowly. The place where witness saw him the second time was about a dozen yards from where he met him first. Witness went back on the moment when he observed the clock ; he told the man at once.

Re-examined : New Cross was an open space at the junction of four streets ; there was a celebrated lamp-post there, round which people congregated every evening after work and talked. The place went by the name of "the Manchester Parliament-house."

BRIDGET MULLEN deposed that she saw the prisoner in Chapel street close to a quarter to four o'clock on the day of the occurrence.

Cross-examined : Was taking a pair of trowsers to her master's on that day. A friend asked her to go into the Gate and Goose going back. Did not know her name, only the woman "just passed that freedom on her." Her sole reason for looking at the clock was that she had some other trowsers to finish.

ELIZABETH HEALEY, who had appeared as a witness for Brannon in the previous trial for murder, repeated her evidence. She was a seamstress, living in Addington street, Rochdale road, and had known Brannon more than three years. Indeed, he was no sweetheart of hers. Saw him on the 18th of September, about 4 o'clock, at the corner of Cable street, near her own home. Next saw him at half-past 4. Remained in his company till five minutes to 5, at the George Inn Vaults, Rochdale road, near Swan street. Each of them had a glass of porter. There was a clock in the vault, facing them as they took the porter at the bar.

Cross-examined : Witness was standing on the steps of her own house when Brannon called to her to go across to the public house. Mr. Tighe and his wife were in the bar at the time.

WILLIAM BRETTALL, barman at the George Inn, gave corroborative testimony.

Mr. Jones summed up the case for his client Brannon. He dwelt upon the circumstances which should deter the jury from attaching weight to the testimony of the boys Hyde and Mulholland, and of Frances Armstrong, who were the witnesses to identify Brannon as a participator in the riot. He claimed for his witnesses of *alibi* that their evidence was of the most unimpeachable character, and he protested against the practice to which the prosecution sometimes resorted, when it was impossible to detect inconsistencies in the story made out by the defence, of suggesting that "it was all true, but on another day." It was not fair either to the Crown, or to the court, or to the prisoner, to go upon that theory, after having refrained from asking witnesses for the defence whether what they deposed to as occurring on the 18th might not really have happened on another day.

The learned counsel was still addressing the jury when this report was despatched.

[From the London Times, November 14, 1867.]

CLOSE OF THE SPECIAL COMMISSION AT MANCHESTER.

MANCHESTER, *Wednesday.*

With the sentencing of the seven prisoners convicted of riot and assaulting the police the proceedings were brought to a close at a late hour last night, and the police van, with its Hussar escort and surrounding bayonets, made its last transit on this service from the assize court to Salford jail. In all, the proceedings had extended over sixteen working days, beginning at the early hour of nine o'clock each morning, and continuing usually until six o'clock p. m., and frequently to a much later hour. Of the twenty-six prisoners named in the calendar twelve were convicted : that is to say, five who were included in the first indictment for murder, and seven upon the charges subsequently preferred for riot and assault. Eight were released without any indictment being pressed against them ; one (Kennedy) was acquitted of misdemeanor and discharged ; while five (*i. e.*, Bacon, Coffey, Martin, Nugent, and Wilson) were tried for the graver offence and acquitted. Wilson, moreover, was separately arraigned for misdemeanor and again acquitted. Brannon and

Fetherstone, two prisoners who had been found "not guilty" of the murder, were not equally fortunate, for upon evidence almost identical with that given in the first trial they were convicted of riot and assault by another jury. In particular cases, where, from the nature of the *alibi* sought to be established, a direct and positive conflict of testimony ensues, and the jury have cast upon them the unwelcome task of receiving or rejecting the whole of the testimony given upon one side, doubts, of course, will always linger. But, viewed as a whole, no one who watched the recent trials from first to last could fail to be struck by the signal fairness and impartiality with which they were conducted. The Crown acceded to any reasonable proposition on the part of the defence, and the scrupulous care governing the selections of men who were to be arraigned and those who were to go free is evidenced both in the number released without trial, and the proportion of convictions obtained in the case of those actually called upon to plead. If the men recently tried at Manchester, or any of them, had not a perfectly fair hearing, then it can only be said that the whole system of trial by jury in crimino-political cases is delusive, and ought to be abolished. Upon Mr. Justice Blackburn devolved no ordinary labor and responsibility, for though in the two earlier trials he had the aid and countenance of Mr. Justice Mellor, yet, from the first authoritative dealing with the irregularities of Mr. Roberts to the ultimate termination of the special assize, his was plainly the guiding influence. The difficulties of the situation, ample in themselves, could not fail to be aggravated by the mysterious hints and plainly worded intimations which, from day to day, reached the police authorities or the bench itself, to the effect that violence was planned or intended by friends of the prisoners. When circumstantial statements are made and repeated that men have been told off for particular acts of desperation, and are lurking about the precincts of the court with air-guns, however wild and improbable the stories may seem, yet, after an occurrence like the attack on the police van, the shuffling of feet or the mere rustle of a newspaper becomes a source of irritating disturbance. It is due to Mr. Justice Blackburn to say that he never for a moment slackened in his scrupulous attention to the evidence, or betrayed the slightest consciousness of the rumors that were flying about. Of these, the press at the time, of course, had ample knowledge, but withheld all mention of them as long as mischief or inconvenience could be occasioned; in fact, till the learned judge had left the town. And from this course, suggested by prudence and right feeling, they were not moved by a somewhat sweeping comment as to newspapers and their contents which fell from the bench in answer to a remark by Mr. Cottingham.

No day has yet been named for carrying out the extreme penalty of the law in the case of the men condemned to death: but if the usual course in such cases be adhered to, the execution will take place on the third Saturday after the judge leaves Manchester, *i. e.*, on next Saturday fortnight.

The proceedings of the 14th and concluding day of the Fenian trials were reported with sufficient fulness in *The Times* up to the delivery of Mr. Ernest Jones's speech in defence of his client Brannon.

The learned counsel had not concluded when the report was despatched. The latter portion of his address was an appeal to the jury to place no reliance on evidence for riot which had already failed to obtain a conviction for murder.

At the close of his address Mr. Jones called Mrs. Catherine Adams, of Turner street, who corroborated a statement made by Bridget Manning, that she had given Brannon work on that day.

Mr. Cottingham addressed the jury on behalf of Fetherstone, for whom there were no witnesses called. He said it was not often in this country that we saw a man twice brought before an English jury during one commission or one assize. He maintained that there was not a particle of evidence in the case to show that his client assaulted any one as charged in the indictment. It was an extraordinary thing that the new evidence about the moustache and beard of Featherstone should have been introduced for the first time that day. If evidence of that kind was kept back, even by accident, the prisoner was defrauded of the just means of preparing his defence. This evidence had been sprung upon them without any previous notice having been given, and of this he complained. He urged that, although Featherstone had shortened his beard and removed his moustache, he had no intention of disguise; for had he had such intention he would have had the beard shaven off altogether. He asked the jury not to rely upon the cooked-up, second-hand evidence given that day, and concluded by thanking Mr. Pickering for the fairness with which the prosecution had throughout been conducted.

Mr. Pickering, Q. C., briefly replied on the whole case on behalf of the Crown.

Mr. Justice Blackburn summed up the evidence on both sides, and told the jury they must not pay too much regard to the fact that a prisoner had been previously tried on another charge and acquitted. They must give their own independent judgment on the evidence before them as to the present charge of rioting and assaulting the police, causing actual bodily harm. There was no doubt that the constables Taylor and Trueman received such an assault as to constitute bodily harm. There was no doubt that the rescue of Kelly and Deasy was a deliberately planned scheme, and those who were present were as guilty as those who committed the actual offence. There was the more serious offence of the murder of Brett, and it was no doubt quite possible that a man might be there aiding and abetting

in attacking the police without being liable for the murder. It was necessary, in order to make themselves liable for the acts of others, that they should be acting with a common design for the purpose for which they were liable. If they were engaged in concert assaulting the police, it would not make them responsible for the killing of Brett, unless it was shown that they were in concert in carrying out the design to rescue Kelly and Deasy by the use of violence dangerous to life. To make them guilty of assault it would be only necessary to show that they were acting in concert to assault with grievous bodily harm, and from the nature of the case, considering that pistols were used, the jury could hardly do otherwise than come to the conclusion that they were in concert to use dangerous violence. Therefore, the jury who had acquitted the prisoners of murder might very well think them to have been guilty of the minor offence. His lordship went on to state that when a man was tried for a crime once he could not be tried again; but when two crimes were involved, although they might depend upon the same evidence, although there might be an acquittal upon one, that was no bar to the trial on the other. The former jury had come to one conclusion, and it was quite possible for this jury to come to another conclusion, although the fact that the former jury had come to such conclusion should lead them to consider and weigh the evidence more carefully. His lordship referred to the fact that Macnamara, who gave evidence as to Featherstone's shaving off his beard, had not been called at the trial for murder. This, to a certain extent, reflected upon the prosecution, but they must give no more weight to it than it deserved. He reviewed the evidence, and left the jury to say whether they were satisfied the two men now before them, Brannon and Featherstone, were taking such a part in the attack as showed they were aiding and abetting an act of violence.

After thirteen minutes' deliberation, the jury convicted both the prisoners.

The prisoner Brannon appeared very much surprised and taken aback by the result.

Mr. Justice Blackburn directed that all the other prisoners awaiting sentence should be brought up. The names of the entire list are John Carroll, Charles Moorehouse, Daniel Redden, Thomas Scalley, William Murphy, John Brannon, and Timothy Featherstone.

His lordship, addressing them collectively, said: Prisoners, you have all of you been convicted of the different indictments preferred against you—all of them of the same form and substance. On these indictments the whole seven of you have been convicted of a variety of offences, none of which exceeded a misdemeanor. The greatest offence of which you have been convicted is one upon which the heaviest punishment will be passed—that of assaulting the police, and causing actual bodily harm. The other offences are offences all of which justify only a lighter punishment. For assaulting the police and doing actual bodily harm more punishment cannot be given than five years' penal servitude. The other offences justify a punishment of two years' imprisonment, with hard labor. I have considered the case of each of you, and from the facts as set down, although the Crown has chosen with regard to most of you not to prefer the charge of murder, and although in the case of two of you the charge of murder was preferred, and a former jury have acquitted you of that charge, yet I cannot myself doubt that every one of you who took part in the attack on the police in the way which is proved against each of you were really guilty of that degree of violence which, in point of law, according to my view of the law, would make you as guilty of the murder of Brett, and certainly did, both morally and legally, make the offence you actually committed as bad as any offence of its class possibly could be. Under these circumstances I have considered the cases, and, having come to the conclusion that the offence is as bad as it possibly could be, I think I must give the maximum punishment which the law permits. The sentence as to each of you—I can make no distinction—upon the counts upon which you have been convicted, is that you be kept in penal servitude for five years. On the other counts connected with the assault and rescuing prisoners from detention I pass the sentence of two years' imprisonment, with hard labor: that is merely nominal; it will be concurrent with the other. I pass that sentence for technical reasons which I need not explain here. The real sentence is that you be kept in penal servitude for five years. I trust this example will make every one aware that a violent attack upon the police, even if no death ensues, is an offence which will be visited with very severe punishment in the case of those concerned, and it is absolutely necessary for the protection of the police that such a degree of punishment should be inflicted.

The prisoner Murphy then stepped forward and said, "May it please you, my lord, to hear a few remarks?"

The JUDGE. Certainly; I will hear anything you have to say.

MURPHY. I wish to say, my lord, and protest in the face of the liberal British public, that it is not for the case of the riot in Hyde road that I was arraigned at this bar, but simply on a charge of treason-felony, inasmuch as the papers handed in against me. It was a mere myth. In the face of a liberal public I say it is on these grounds alone I have been convicted at this bar. Your lordship will recollect the remarks you addressed the jury upon yesterday evening, when Mr. Sheridan brought the order-book. You said the evidence given there, inasmuch—

The JUDGE. I cannot act upon that. The verdict of the jury binds me, and I have no power to alter it. If any application were required, it must be made to the home secretary; but I am bound to say that, as regards you, if I had been upon the jury, upon that evidence I should have convicted you.

MURPHY. I hope and trust the press will take notice of the papers handed in against me. The JUDGE. You will do yourselves no good by that.

MURPHY. I hope the representatives of the press will take notice of the remarks I make. The prisoners were being removed, when Murphy turned towards the back of the court and shouted "Good-bye!" Immediately female voices were heard, and Carroll jumped upon one of the seats of the dock and also shouted "Good-bye!" A scene of some little confusion ensued; several women in the court wailed and screamed, and a rush was made towards the doors. Moorhouse handed in a testimonial which he had received from a former employer, and the judge, after looking at it, returned it to the prisoner's counsel, directing them to forward it to the home secretary.

The prisoners were removed amid renewed weeping and wailing, which was suppressed as far as possible. It was understood that one of the wretched men in the dock had five little children.

Mr. Justice Blackburn informed the jury that the business of these trials was at an end.

The assizes were then terminated with the usual proclamation.

Mr. Seward to Mr. Adams.

No. 2087.]

DEPARTMENT OF STATE,
Washington, November 5, 1867.

SIR: I have to acknowledge the receipt of your despatch of the 23d of October, No. 1467.

Having carefully read the papers which accompany that communication, I have now to observe that it will be impossible for this government to acquiesce in the practice which has obtained of an indefinite suspension of the *habeas corpus* in the time of peace and with no declared insurrection in Ireland, while the privileges of the writ remain undisturbed in England and Scotland. The practice especially operates to discriminate dangerously against one class of citizens of the United States when sojourning abroad under the protection of a mutual treaty, that class being one that, though discriminated against in Great Britain, has received special guarantees of protection from the United States.

It is certain that the course of proceeding which has been pursued in Ireland hitherto has induced the consul there to answer citizens of the United States detained under arbitrary arrest that he could not lend his good offices to them unless they should produce passports, which no public law or military order in force in that country requires a foreigner to carry while sojourning there.

It is easy to see how the studied reservation in the correspondence of the Irish local government with the consul has obliged him to give to arrested prisoners such replies as are complained of. It ought not to be difficult for her Majesty's government to perceive how such replies may serve to excite and inflame popular opinion in the United States.

For these reasons the President desires that you will urgently renew your appeal to the British government to adopt either the measure which was suggested in my despatch No. 2049 or some other measure which will not leave it doubtful that every citizen of the United States arrested in Ireland without authority of law enjoys the same attention and measure of protection at the hands of this government that every British subject is allowed to claim from his own government under parallel circumstances when arrested or detained in the United States.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c., *London.*

Mr. Adams to Mr. Seward.

No. 1478.]

LEGATION OF THE UNITED STATES,
London, November 9, 1867.

SIR: Apart from the events taking place in Italy, there has been no incident of interest this week. The trials of persons implicated in the rescue at Manchester have resulted in the acquittal of a number, the release of others, and the condemnation of three more.

At Dublin the trial of Costello has terminated in the discharge of the jury on account of difference of opinion. This was mainly brought about by the very skilful management of the case by his counsel, Mr. Heron. Had Captain Warren consented to accept the same aid, instead of assuming the position he did, and attempting to manage his own case afterwards, it is not unlikely the same result might have followed.

The next case is that of William Halpin, who appears to allege citizenship from naturalization, but he has never thought proper to make any claim on this legation, from which I infer that he has not the evidence in his possession.

The charges made by the lawyers employed to defend Colonel Nagle and Captain Warren are, as I anticipated, very heavy. The other prisoners, I have reason to believe, are protected, when they prefer that course, at much less cost and with quite as much efficiency.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,

Washington, November 15, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.:

Delay judgment or execution Warren's case.

WILLIAM H. SEWARD.

Mr. Seward to Mr. Adams.

No. 2091.]

DEPARTMENT OF STATE,

Washington, November 15, 1867.

SIR: You will have received a telegram from this department of the present date instructing you to obtain from her Majesty's government an order for suspension or delay of judgment or execution in the case of Captain John Warren, recently tried for treason felony in Dublin, Ireland.

Your particular attention is further directed to this subject in order that time may be afforded the government of the United States to examine the subject fully and determine what measures to take in the premises.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1481.]

LEGATION OF THE UNITED STATES,

London, November 16, 1867.

SIR: I have to acknowledge the receipt of despatches from the department, numbered 2085 and 2086 ; also, of a telegram by the cable, dated yesterday, the 15th instant, desiring me to delay judgment or execution in Warren's case.

This seems to have been sent under a partial knowledge of the facts attending this trial. At the close of it the court did not give judgment, but simply ordered the prisoner to stand aside, probably with an intention to reserve judgment until the other cases had been disposed of.

Moreover, the offence of treason-felony, as it is defined by statute, is not one involving a penalty of life, so that, in any event, there is no prospect of the execution of the prisoner. Under these circumstances, I do not perceive what I can do at present that will promote the object designated in the telegram.

The government has determined upon another effort to convict Costello, it being understood that in the last jury there were only one or two dissentients. The trial is now going on at Dublin. The reports are furnished to you from Dublin by my direction, as I learn from the consul at that place.

I have received a long letter from Shore or Shaw, one of the five men condemned to death for the attempt to rescue the two prisoners at Manchester, affirming his citizenship under the name of Edward O'Meagher Condon, and asking my interposition to prevent the execution of the penalty. It is much to be regretted that he should not have made his application to me previously to the trial, when possibly a better defence might have been prepared for him.

From a careful review of the evidence, it appears pretty clear that he was present and actively engaged in the attack upon the prison van, but that, unlike the other three, he was without fire-arms or any other weapon than stones. I have written to Mr. Lord, the consul at Manchester, to see the prisoner if possible, and to report whether anything can be done for him ; but I fear the nature of the assault, and the general feeling of panic which it has spread far and wide over the place and vicinity, will render it useless to approach the government with any plea in mitigation of the sentence.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

*Secretary of State, Washington, D. C.**Mr. Adams to Mr. Seward.*

No. 1482.]

LEGATION OF THE UNITED STATES,

London, November 18, 1867.

SIR: Since writing my despatch No. 1481, of the 16th of November, I have received intelligence from Dublin of another change of plan on the part of the government.

On that same day the trial of Costello terminated in a verdict of guilty, and the solicitor of Ireland announced an intention to transfer the persons remaining in custody to be tried in the county of Sligo in March next. As a consequence the court, being about to adjourn, proceeded at once to judgment. Captain Warren was then sentenced to fifteen years and Costello to twelve years of penal servitude.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Seward to Mr. Stanbery.

DEPARTMENT OF STATE,
Washington, November 18, 1867.

SIR: It appears by despatches from Mr. West, the United States consul in Dublin, that on the 30th of October last John Warren was put upon trial before a special commission at Dublin upon an indictment for treason-felony, which indictment purported to have been found in conformity with a statute of the British realm. In compliance with a previous request of the prisoner, counsel employed by the United States attended for his defence. Besides such counsel this government had also retained John Adair, esquire, barrister of the law, to attend the trials of any American citizen who might be brought before that tribunal under a charge of treason-felony, to the end that through him any error which might occur at such proceedings should be discovered and seasonably made known to this government. Upon being arraigned John Warren pleaded that, although he was born in Ireland, under allegiance to the British Crown; yet, that he now is, and has been from the first day of October, 1866, a citizen of the United States of America, by naturalization, for which reason he insisted that he is an alien; and he claimed a right as such alien to be tried by a jury whereof one-half should be native of the British realm and the other half aliens from Great Britain, born in the United States of America and under their allegiance. The court overruled the plea, and directed the trial to proceed before a jury consisting exclusively of British subjects. It appears that thereupon John Warren directed his counsel to withdraw from the case, declaring that the ignoring of his rights of American citizenship "placed him in the hands of the United States government, which had now become the principal." The counsel and attorney thereupon retired. It further appears that when the counsel and attorney so retired, Mr. Adair then rose and stated to the court that he had been instructed to watch the proceedings, and, counsel having retired from the case, he considered it right that he should attend the remainder of the proceedings in the present case; and that as the prisoner had said that he threw himself into the hands of the United States government, he (Mr. Adair) wanted to know to what extent it would be his duty, and he would be justified in appearing in the case. The presiding judge thereupon stated that if Mr. Adair were acting as counsel for the prisoner, they would not inquire where he got his instructions; *but* if he were not acting for the prisoner, they could not recognize him as counsel, though employed by persons not party to the record. One of the judges then stated that if, on consideration, the prisoner thought fit to dispense with the assistance of the other counsel, and to adopt Mr. Adair, he was at liberty to do so. Mr. Adair stated in the presence of the prisoner that he was not instructed on behalf of the prisoner, whereupon the learned judge said in that case his interference was irregular as a barrister, and Mr. Adair took no further part in the proceedings. Later reports by telegraph show that the prisoner had been convicted and sentenced to penal imprisonment for a term of years. Unauthenticated reports in public journals have been received at this department, by which it appears that the presiding judge assigned as the reason for overruling the prisoner's plea that, he having been born a subject of Great Britain, his native allegiance was indefeasible; and that naturalization in the United States did not avoid his native allegiance to the British Crown nor constitute him an alien. Upon this statement of facts I have the honor to ask your opinion upon the following questions:

1. Whether error was committed on the trial of John Warren?
2. Whether that error is sufficient to vitiate the judgment of the court.
3. Whether any legal remedy; and if so, what legal remedy, can be applied for correcting the error?

4. Are the United States hindered, prevented, or embarrassed in seeking such remedy by the prisoner's dismissing the counsel, attorney, and agent who had been employed by the United States in his behalf?

5. How far is the opinion expressed by the presiding judge important in the case, and is it sound law? It becomes necessary that I should ask your opinion upon a further point, namely, whether an alien indicted in the United States and put upon trial for treason-felony in a federal or State court is entitled to a jury *de mediatate lingue*; and if so, what must be the qualifications of the position of the jurors who are aliens—that is to say, whether such jurors must be persons owing allegiance to the same country of which the accused is a citizen or subject, or whether they are to be merely aliens, without reference to their special allegiance? The papers upon which these questions arose are hereby submitted for your information. Your attention is especially directed to an extract from Mr. Adams's despatch No. 1476, which bears especially upon the fifth question herein submitted. I will thank you to return the several papers to me at your convenience.

Your obedient servant,

WILLIAM H. SEWARD.

Hon. HENRY STANBURY,

Attorney General.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,

Washington, November 19, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.:

Solicit clemency for O'Brien and McCondon, sentenced at Manchester.

WILLIAM H. SEWARD.

Mr. Seward to Mr. Adams.

No. 2096.]

DEPARTMENT OF STATE,

Washington, November 21, 1867.

SIR: I have to acknowledge the receipt of your despatch of the 9th of November, No. 1478.

The occurrence at Manchester must be regarded as unfortunate. It is not to be denied that the case involved a great crime against municipal law. At the same time, the nature of that crime is liable to be overlooked in this country in the political character which the Fenian proceedings everywhere assume. There is a period in the history of every popular cause when severity loses its restraining effect, and terror lends strength to the revolutionists. Under this view of the subject, I instructed you on the 19th instant to solicit clemency for Michael O'Brien and Edward O. McCondon, convicted at Manchester.

The proceedings in the case of Colonel Warren, at Dublin, are the subject of even more serious concern. The court on the trial of Warren pronounced British allegiance indefeasible, and claimed, by virtue of that indefeasibility, to hold the prisoner amenable, as a British subject, to that court for acts done in the United States which are not forbidden by our own laws or by international law, and for which, even by British law, they do not claim he would be responsible if not a subject of Great Britain. The United States hold, on the con-

trary, that, in such case, he being a naturalized citizen of the United States, is not amenable to the courts of Great Britain or any foreign tribunal. I regret, exceedingly, that such an issue has been raised between the two countries. I shall not now stop to inquire whether this solemn conflict with our naturalization laws has been necessarily declared in the trial of the case of Warren, or whether it might have been wisely left undeclared, nor shall I now wait to remove from the question the embarrassment with which it is encumbered by the citation of certain American judicial authorities and commentators. I content myself, for the present, therefore, with informing you that the pretention of the Irish court cannot be allowed by this government.

I shall have occasion soon to address you more fully upon the subject.

I am, sir, your obedient servant,

WILLIAM H. SEWARD,
Secretary of State.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,
Washington, November 22, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c. :

Urgently renew solicitation of clemency to O'Brien and McCondon, Manchester.

WILLIAM H. SEWARD,
Secretary of State.

Mr. Adams to Mr. Seward.

No. 1484.]

LEGATION OF THE UNITED STATES,
London, November 22, 1867.

SIR : I have to acknowledge the reception of despatches from the department, numbered 2087, 2088, and 2089.

Likewise a telegram by the cable, of the 20th instant, desiring me to intercede with the government in behalf of Shore *alias* Condon, and Gould *alias* O'Brien, condemned to death at Manchester.

On the morning of the 20th instant, and before receiving the message, I had, after a careful examination of the testimony given at the trial, as well as of a summary made of it by Shore himself, and sent to me through Mr. Lord, the consul at Manchester, decided to make a representation to Lord Stanley in his behalf. A copy of my letter is herewith transmitted. Last evening I received a note acknowledging, in the usual form, the reception of mine, and its reference to the home secretary. At the same time I received a private note from his lordship to inform me that a reprieve of Shore had already been determined upon, a fact which I find authoritatively announced in the London Times of this morning.

The question remains whether it is expedient to interpose in the same manner in behalf of Gould. On the most careful reflection which I can give the matter, I have come to the painful conclusion that such a step would be likely to do more harm than good. The ministry here are involved in grave difficulties, mainly by reason of the intemperate manner in which the relief of the

three remaining prisoners has been demanded in popular meetings, and the demonstrations that have been attempted in order to overawe their decision. There can be little reasonable doubt of the guilt of the prisoners, and of the general feeling of panic their act has spread in every direction over the country, which call for severe punishment to deter from repetition of it. Under these circumstances, a further effort at interposition on my part would lay them under the necessity of giving a refusal, or else of appearing to give way to an extraneous influence, of which already a great deal of jealousy has been manifested, especially in the late cases in Ireland. It is difficult for people to manage their own cause more unfortunately than the prisoners in that country have lately done. They have gloried so loudly in their desire to enlist the United States in their cause, so far as to bring a rupture between the countries, that it makes it more and more difficult for the government to avoid the appearance of fear in making any concessions whatever.

If, in coming to this conclusion, I have been in error, I can only regret it is the offspring of a sincere but mistaken conviction.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Lord Stanley.

LEGATION OF THE UNITED STATES,

London, November 20, 1867.

MY LORD: I have the honor to transmit to your lordship a memorandum addressed to the consul of the United States at Manchester, signed E. Shore, one of the persons now condemned to be executed for a criminal offence committed at that place.

This man claims to be a naturalized citizen of the United States. I am well aware that this furnishes no reason for official interposition in a case like this, of a gross violation of the laws of the kingdom. Neither is it my intention, in submitting this paper, to be understood as entertaining an intention to claim any right whatever to do so. It has appeared to me, however, on a review of the evidence presented on the trial, that the allegation of this prisoner, that he has suffered unduly from the fact of his association in the indictment with the other parties, is sufficiently sustained to justify me in calling your lordship's attention, for a moment, to his summary of the facts. I am very sure that it is not the intention either of her Majesty's tribunals, or of the government, to inflict upon any offender a penalty which may prove to have been more severe than he deserved, especially when that penalty be the taking of life. Having, therefore, the utmost confidence in the calmness and impartiality with which the entire testimony, as applied to this particular case, will be examined by those to whom the duty is committed, I shall not attempt to add a word in the way of argument. It is sufficient that I shall have done what, under the circumstances, seemed to be due to the prisoner, in giving him the benefits of the doubts with which the severity of his sentence appears to me to be accompanied.

I pray your lordship to accept, &c., &c.

CHARLES FRANCIS ADAMS.

The Right Honorable LORD STANLEY, &c., &c., &c.

Mr. Stanbery to Mr. Seward.

ATTORNEY GENERAL'S OFFICE,
November 26, 1867.

SIR: I have had under consideration your letter of the 18th instant, in which you request my opinion upon certain questions, which are thus stated:

First. Whether error was committed on the trial of John Warren?

Second. Whether that error is sufficient to vitiate the judgment of the court?

Third. Whether any legal remedy, and if so, what legal remedy can be applied for correcting the error?

Fourth. Are the United States hindered, prevented, or embarrassed in seeking such remedy by the prisoner's dismissing the counsel, attorney, and agent, who had been employed by the United States in his behalf?

Fifth. How far is the opinion expressed by the presiding judge important in the case, and is it sound law?

It becomes necessary that I should ask your opinion upon a further point, namely, whether an alien indicted in the United States, and put upon trial for treason-felony in a federal or State court, is entitled to a jury *de mediatate lingue*; and if so, what must be the qualifications of the portion of the jurors who are aliens—that is to say, whether such jurors must be persons owing allegiance to the same country of which the accused is a citizen or subject, or whether they are to be merely aliens without reference to their special allegiance?

The facts upon which these questions arise appear to be as follows: On the 30th of October last, John Warren was put upon trial before a special commission at Dublin, Ireland, upon an indictment for treason-felony. Upon being arraigned, Warren pleaded that, although he was born in Ireland, under allegiance to the British crown, he then was, and had been from the first day of October, 1866, a citizen of the United States of America by naturalization, for which reason he insisted that he was an alien, and claimed the right as such to be tried by a jury, whereof one-half should be natives of the British realm, and the other half aliens from Great Britain, born in the United States of America, and under their allegiance. The court overruled the plea, and directed the trial to proceed before a jury consisting exclusively of British subjects. Warren thereupon directed his counsel to withdraw from the case, declaring that the denial of the right set up "placed him in the hands of the United States government, which had now become the principal." His counsel and attorney then retired from the case.

Thereupon Mr. Adair, an Irish barrister, retained by the United States to attend the trial of American citizens under a charge of treason-felony to see that if any errors were committed in such proceedings the same should be made known to this government, stated to the court that he had been instructed to watch the proceedings, and claimed the right to appear in the case under his retainer by the United States, and inquired of the court if he would be justified in appearing.

The court answered that, if he was acting as counsel for the prisoner, they would not inquire where he got his instructions; if he was not acting for the prisoner they could not recognize him as counsel, though employed by persons not parties to the record. Mr. Adair then stated in the presence of the prisoner that he was not instructed on behalf of the prisoner. To which the court replied, that his interference as barrister, under such circumstances, was irregular. Upon which Mr. Adair took no further part in the proceedings.

It appears further, by unauthenticated reports in public journals, that the reason given by the court for overruling the plea was, that Warren having been born a subject of Great Britain his native allegiance was indefeasible, and a naturalization by the United States did not avoid his native allegiance to the British crown, nor constitute him an alien. Warren was convicted, and sentenced to imprisonment for a term of years.

I am not prepared to say that any error was committed upon the trial of John

Warren. No record of the proceedings or rulings of the court which tried him is before me, and I must confine myself to the statement as to his plea and the overruling of the plea by the court set forth in the above extract from your letter. If the offence for which he was indicted amounts to treason by British law, Warren was not entitled to a jury *de mediatate*, for that right has never been extended to trials for treason.

I do not know what are the particular allegations contained in the indictment. All that is stated is that the offence charged was treason-felony, an offence defined by a British statute, and which seems to be classed with the offence of treason. But however that may be, and whether the offence amounted to treason, or was a mere felony, below the grade of treason, it is very clear that the court committed no error by refusing to extend to him the privilege of a jury *de mediatate*.

That right, given by statute in England, is confined altogether to aliens; but according to English law, perfectly well established, a native-born citizen of Great Britain does not become an alien by expatriation or abjuration of his allegiance, or by being clothed with a new allegiance in a foreign country.

The question here is not how far this peculiar doctrine of English law is in conformity with public law, or what are the consequences when it comes under consideration in another sovereignty, but the question now is altogether one of English law. The right set up by Warren was a right conferred by British law, and must, therefore, in a British court be regulated by that law; and it would not be admissible to take the benefit of the right, and ignore the exceptions which are established against its exercise. I feel very clear, therefore, that no error was committed in refusing Warren a jury *de mediatate*.

This opinion renders any further answer unnecessary to the first five questions propounded in your letter.

The sixth question upon which you ask my opinion is, whether an alien indicted in the United States, and put upon trial for treason-felony in a federal or State court, is entitled to a jury *de mediatate lingue*. The right of trial by jury *de mediatate* is not a common-law right. It exists in England by statutory provision. So far as the question concerns federal law, I am clearly of opinion that no such right exists in cases of treason, or any other crime. The statutes of the United States make no provision for such a jury; on the contrary, the statutory provision, as to juries in the federal courts, requires qualifications wholly inconsistent with a jury *de mediatate*.

By the act of June 17, 1862, (12 Stat. at Large, p. 430,) the taking up of arms against the United States is declared to be a disqualification and cause of challenge as to any grand or petit juror in the courts of the United States, and, upon the motion of the district attorney, each grand and petit juror in any of the courts of the United States is required, among other things, to take an oath that he will support the Constitution of the United States. The first of these provisions would disqualify an alien who had been engaged in lawful war against the United States waged by his own sovereign; the second is wholly inconsistent with the idea that any alien could be a juror in contemplation of federal law.

In addition to this we find in the first section of the act of July 20, 1840, (5 Stat. at Large, p. 394,) the following provision: "Jurors to serve in the courts of the United States, in each State, respectively, shall have the like qualifications and be entitled to the like exemptions as jurors of the highest court of law of such State now have or are entitled to, and shall hereafter from time to time have and be entitled to," &c. This provision leads at once to the inquiry suggested in your question as to any regulation in the courts of the States in regard to a jury *de mediatate* on the trial of an alien.

After much research I feel safe in saying that there exists at this time neither by statutory provision nor by any judicial decision following the common law, or any British statute, the right of a jury *de mediatate* in any one of the States of the

Union. I find only three cases upon this subject in the State courts, and these have occurred in three of the original thirteen States, which at one time, as colonies, were more or less under the operation of British law. The first, in order of time, is Mesca's case, decided at the September sessions of the court of oyer and terminer, at Philadelphia, A. D. 1783, in which it was held, upon an indictment against four Italians for murder, that they were entitled to a jury *de mediatate*. I find in a note to that case that in a subsequent case, *The Commonwealth vs. De Mora*, in the mayor's court at Philadelphia, decided in 1824, a jury *de mediatate* was refused on the ground that the act of 1805, regulating juries, had, in effect, abolished it. Next in order of time is the case of *The People vs. McLean*, (2 John's R., p. 380,) decided in the court of oyer and terminer, before Mr. Justice Tompkins of the supreme court of New York, A. D. 1807. In that case the application for a jury *de mediatate* was allowed. It would seem from the opinion of the court that the right to such trial was by mistake founded upon the common law. However that may be, such right, if it ever existed in the State of New York, has long since been abolished by a provision in the Revised Statutes of New York, vol. 2, p. 758, in these words: "No alien shall be entitled to a jury of part aliens or strangers for the trial of any indictment whatever." The last case in the order of time is that of *The State vs. Antonio*, decided by the supreme court of North Carolina, A. D. 1825, (4 Hawk's R., p. 200.) Antonio, being an alien, indicted for murder, moved for a jury *de mediatate*; the court overruled the motion.

I do not doubt that in some of the original States the provisions of the statutes of Edward III, which gave the right to a trial per *mediatate linguæ*, were held to be in force during their colonial existence; but I repeat that, at this time, no such right exists in any State of the Union.

Putting the question next upon the footing of comity, aside from positive law, the United States have no right to complain that one of its citizens, indicted for a crime committed in Great Britain, is not entitled to a privilege which is not accorded by federal law or State law to a subject of Great Britain indicted for crime committed in the United States. If a citizen of the United States, either natural-born or naturalized, commits a crime in Great Britain, his plea of citizenship is of no avail. While he is in Great Britain he owes a temporary allegiance to that sovereignty. He owes not only obedience to its criminal laws, but a temporary allegiance, which subjects him to punishment for treason. He is then altogether within the proper domain of British law, and if, as in this case, he insists upon a right founded upon and peculiar to British law, he must show himself entitled to the exercise of that right in conformity with that law. This rule clearly applies to the right set up by Warren. The right was not accorded to him, as by the established law of Great Britain it was confined to aliens, and, in contemplation of British law, Warren was not an alien.

Limiting myself to the facts of this case, I have no hesitation in saying that we have here only a question of British law, and that Warren's condition as to alienage or citizenship, for the purposes of this case, is to be fixed by that law alone. A question as to status or citizenship, if it arose in the United States, would be determined by our own law; or if it arose upon the high seas or anywhere out of the jurisdiction or operation of British law, then it would be a question either under our own laws or of public law, as might happen, according to the circumstances under which the right was asserted or denied.

I have the honor to be, with great respect,

HENRY STANBERY,
Attorney General.

HON. WILLIAM H. SEWARD,
Secretary of State.

Mr. Seward to Mr. Adams.

No. 2101.]

DEPARTMENT OF STATE,

Washington, November 27, 1867.

SIR: I have just now received your despatch of the 16th of November, No. 1481. In my No. 2096 I explained the grounds for asking delay in the case of Warren. In the same paper I gave my reason for urging clemency to O'Brien and McCondon. I have this day, by telegraph, asked to be furnished with a copy of the statutes of treason-felony under which the prisoners Warren, Costello, and Nagle are indicted. Whatever may be the moral effect of those proceedings in Great Britain, it is quite certain that they have excited profound discontent in the United States. I shall have occasion to write you fully upon the subject after I shall have received the copy of the statutes referred to, and a more full and accurate report of the trials which have been held at Dublin.

In the *Globe*, which is regularly forwarded by this department, you will find a report of congressional debates concerning the subject of the Fenian trials.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1485.]

LEGATION OF THE UNITED STATES,

London, November 29, 1867.

SIR: I have to acknowledge the reception of your despatch No. 2090, of the 15th of November, in relation to the case of Captain John Warren, and likewise of a telegram by the cable on the 28th, instructing me to forward immediately the statutes of treason-felony under which he was tried. I infer from this message that at the moment you must have been in possession of my despatch No. 1481, of the 16th of November, explaining the nature of that statute. I have caused to be procured copies of the different statutes relative to the late modifications made of the old law of treason and their application to Ireland, together with a specification of the trials already had under them, which I have the honor to transmit herewith.

This seems to me the quickest and best answer I can make to the message, without a necessity of incurring the expense of the telegraph.

The execution of the three men condemned for the rescue of prisoners and killing of a policeman took place in due course of law, on Saturday last, without any extraordinary incident. It was attended with far less excitement than had been apprehended. Many missives threatening assassination had been sent to different public officers, of which I also happened to be a recipient of one, but nothing serious has thus far come of it.

I now have the honor to transmit, at the desire of the writer, a letter addressed to me by Colonel Nagle, which seems to demand my immediate interference in his behalf, on account of the delay caused by the postponement of his trial. Since this was written, an application in due form has been made by his counsel to the court at Dublin, and has been refused. It has hardly seemed to me possible to dispute the right of this government to judge of the time when it is convenient to bring a prisoner to trial, in the face of the fact universally known here, and much commented on, of the long detention in confinement of Mr. Jefferson Davis.

Mr. West, on the 22d instant, reported to me that, so far as he was informed, there were at that date only ten persons claiming to be citizens of the United States remaining in prison. One of the ten, Lawrence Doyle, has been since

offered his release on the ground of his failing health. Of the remainder, he is notified that six, including Colonel Nagle, are to be tried at the spring assizes of the county of Sligo. The three others are also to be tried at the next spring assizes of the respective counties in which they were arrested.

I am glad to learn that the ground of just complaint, on the score of long imprisonment without assignable cause, will be, before long, removed.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State.

ANNO UNDECIMO.—VICTORIÆ REGINÆ.

CAP. XII.—AN ACT for the better security of the Crown and government of the United Kingdom.—[22d April, 1848.]

Whereas by an act of the Parliament of Great Britain, passed in the thirty-sixth year of the reign of his late Majesty King George the Third, intituled An act for the safety and preservation of his Majesty's person and government against treasonable and seditious practices and attempts, it was, among other things, enacted that, if any person or persons, whatsoever, after the day of the passing of that act, during the natural life of his said Majesty, and until the end of the next session of Parliament after the demise of the Crown, should, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of his said Majesty, his heirs or successors, or to deprive or depose him or them from the style, honor, or kingly name, of the imperial Crown of this realm or of any other of his said Majesty's dominions or countries, or to levy war against his said Majesty, his heirs and successors, within this realm, in order, by force or restraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon or to intimidate or overawe both houses or either house of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other of his said Majesty's dominions or countries under the obedience of his said Majesty, his heirs and successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them should express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses, upon trial, or otherwise convicted or attainted by due course of law, then every such person or persons, so as aforesaid offending, should be deemed, declared, and adjudged to be a traitor and traitors, and should suffer pains of death, and also lose and forfeit as in cases of high treason. And whereas by an act of Parliament, passed in the fifty-seventh year of the same reign, intituled An act to make perpetual certain parts of an act of the thirty-sixth year of his present Majesty, for the safety and preservation of his Majesty's person and government against treasonable and seditious practices and attempts, and for the safety and preservation of the person of his royal Highness the prince regent against treasonable practices and attempts, all the hereinbefore recited provisions of the said act of the thirty-sixth year of his said Majesty's reign, which relate to the heirs and successors of his said Majesty, the sovereigns of these realms, were made perpetual; and whereas doubts were entertained whether the provisions so made perpetual were by the last-recited act extended to Ireland; and whereas it is expedient to repeal all such of the provisions made perpetual by the last-recited act as do not relate to offences against the person of the sovereign, and to enact other provisions instead thereof, applicable to all parts of the United Kingdom, and to extend to Ireland such of the provisions of the said acts as are not hereby repealed:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lord's spiritual and temporal and common in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act the provisions of the said act of the thirty-sixth year of the reign of King George the Third, made perpetual by the said act for the fifty-seventh year of the same reign, and all the provisions of the last-mentioned act in relation thereto, save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the heirs and successor of his said Majesty King George the Third, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them, shall be and the same are hereby repealed.

II. *And be it declared and enacted, That such of the said recited provisions made perpetual by the said act of the fifty-seventh year of the reign of King George the Third as are not hereby repealed shall extend to and be in force in that part of the United Kingdom called Ireland.*

III. *And be it enacted*, That if any person whatsoever after the passing of this act shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious lady the Queen, her heirs or successors from the style, honor, or royal name of the imperial crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe both houses or either house of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other her Majesty's dominions or countries under the obedience of her Majesty, her heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labor, as the court shall direct.

IV. *Provided always, and be it enacted*, That no person shall be prosecuted for any felony by virtue of this act in respect of such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open and advised speaking only unless information of such compassings, imaginations, devices and intentions and of the words by which the same were expressed, uttered, or declared, shall be given upon oath to one or more justice or justices of the peace, or to any sheriff or steward or sheriff substitute or steward substitute in Scotland, within six days after such words shall have been spoken, and unless a warrant for the apprehension of the person by whom such words shall have been spoken shall be issued within ten days next after such information shall have been given as aforesaid, and unless such warrant shall be issued within two years next after the passing of this act; and that no person shall be convicted of any such conspiracy, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open or advised speaking as aforesaid, except upon his own confession in open court, or unless the words so spoken shall be proved by two credible witnesses.

V. *And be it enacted*, That it shall be lawful, in any indictment for any felony under this act, to charge against the offender any number of matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions as aforesaid, or any of them, shall have been expressed, uttered, or declared.

VI. *Provided always, and be it enacted*, That nothing herein contained shall lessen the force of, or in any manner affect, anything enacted by the statute passed in the twenty-fifth year of King Edward the Third, *a declaration which offences shall be adjudged treason*.

VII. *Provided also, and be it enacted*, That if the facts or matters alleged in an indictment for any felony under this act shall amount in law to treason, such indictment shall not, by reason thereof, be deemed void, erroneous, or defective; and if the facts or matters proved on the trial of any person indicted for any felony under this act shall amount in law to treason, such person shall not by reason thereof be entitled to be acquitted of such felony; but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts.

VIII. *And be it enacted*, That, in the case of every felony punishable under this act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any such felony shall on conviction be liable to be imprisoned, with or without hard labor, for any term not exceeding two years.

IX. *Provided, always, and be it enacted*, That no person committed for trial in Scotland for any offence under this act shall be entitled to insist on liberation on bail, unless with consent of the public prosecutor, or by warrant of the high court or circuit court of judiciary, in such and the like manner and to the same effect as is provided by an act passed in the session of Parliament, holden in the fifth and sixth years of the reign of his Majesty King George the Fourth intituled *An act to provide that persons accused of forgery in Scotland shall not be entitled to bail, unless in certain cases*; but the trial of any person, so committed, and whether liberated on bail or not, shall in all cases be proceeded with and brought to a conclusion under the like certification and conditions as if intimation to fix a diet for trial had been made to the public prosecutor in terms of an act passed in the Scottish Parliament in the year one thousand seven hundred and one, intituled *An act for preventing wrongous imprisonment and against undue delays in trials*.

X. *And be it enacted*, That it shall not be lawful for any court, before which any person shall be prosecuted or tried for any felony under this act, to order payment to the prosecutor or the witnesses of any costs which shall be incurred in preferring or prosecuting any such indictment.

XI. *And be it enacted*, That this act may be amended or repealed by any act to be passed during the present session of Parliament.

ANNO VICESIMO QUARTO ET VICESIMO QUINTO.—VICTORIÆ REGINÆ.

CAP. XCIV.—AN ACT to consolidate and amend the statute law of England and Ireland relating to accessories to and abettors of indictable offences.—[August 6, 1861.]

[Extract.]

Whereas it is expedient to consolidate and amend the statute law of England and Ireland relating to accessories to and abettors of indictable offences:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, as follows:

As to accessories before the fact—

I. Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.

II. Whosoever shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.

As to accessories after the fact—

III. Whosoever shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

* * * * *

To the honorable members of the United States Congress in session assembled:

The humble petition of John Warren, now a "convict" in Kilmainham jail, county Dublin, Ireland:

GENTLEMEN: I, a citizen of the United States by adoption, respectfully submit the following: I am an Irishman by birth; by adoption an American citizen. Partly in pursuit of my avocation as a member of the American press, and on private business, to see old friends and relations, I arrived in Ireland in the latter end of May, 1867. Immediately after landing, on the 1st of June, I was arrested, cast into a dungeon, and kept closely confined in silence and solitude for nearly five months, without any charge having been preferred against me and without obtaining a hearing of any kind. On the 10th of October I was summarily ordered before a magistrate, and evidence sworn against me by a witness classed and known as an informer. I was committed on his evidence, indicted on the 25th of October, tried, and I stand now a convicted and sentenced *felon for fifteen years' penal servitude* on the uncorroborated testimony of the notorious and infamous perjurer and informer Corydon, who swore he knew me to belong to the Fenian confederacy in America in the year 1863. The indictment charged me with the overt act of the 5th of March in the county of Dublin, Ireland, although the Crown lawyers admit I was not bodily present, but was then in the city of New York. The British law claims me to be a British subject, ignores my United States citizenship, and consequently your right to confer it. The Crown lawyers further hold all members of the so-called Fenian confederation guilty of the overt act of the 5th of March in the county of Dublin, Ireland. Corydon swears I was a member of the above named confederation in America in 1863. England, claiming me as her subject, consequently indicts, arraigns, tries, convicts, and sentences me for an act committed in Ireland when I was in the city of New York, United States of America, and I am this moment a first-class convict in a British bastille, clothed in a suit of convict gray.

Gentlemen, my case is very plain. The English law under which I am claimed, as quoted by the judges who sat in my case, reads: "A British subject who removes to France or America owes the same allegiance to the Queen there as at home, twenty years hence as well as now. For it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former, for his natural allegiance was intrinsic and primitive and antecedent to the other, and cannot be divested without the concurrent act of that prince

to whom it was due." Gentlemen, this law existed when the United States, on my fore-swearing all allegiance to all "foreign princes and potentates, *more especially the Queen of England*," conferred on me the rights of citizenship. If America acknowledged that law she has perpetrated on me the most unjust, the most fraudulent injury. If she did not acknowledge it *then*, why does she now? England has, by indicting, arraigning, trying, convicting, and sentencing me on the uncorroborated evidence of a perjured informer, for an act claimed to have been committed in America, which act as represented was being a member of an Irish national organization in the United States of America in 1863, ignored my previous citizenship, the right of the United States to confer it, and consequently has defiantly enforced this law, and the government of the United States, as represented by Mr. Johnson, Mr. Seward, and Mr. Adams, apparently coincide in this enforcement. If not, why were not some steps taken to defer action till your honorable body had an opportunity of adjudicating on so important a question? I ask you, gentlemen, as I lie to-night in my lonely dungeon, cut away from mother, wife, sisters, children, and friends, immured in a living tomb now for the last six months, what feeling must I have towards my government as represented in this matter? Why should it permit for an hour a citizen to stand convicted of treason-felony in Ireland on the ground of his being a member of an Irish national organization in America, and that too on the evidence of a perjured spy and informer? Which of the two governments up to the present is to me the more treacherous: the government which invites me to renounce all former allegiance whatsoever, confers upon me the full rights (on paper) of American citizenship, affixes its official seal to the act, and extracts a fee for so doing, and, when this citizenship is contemptuously and defiantly repudiated by the government whose allegiance I renounced, tolerates and abandons me to my fate, or the government from which I expect nothing, my natural enemy, the enemy of every aspirant for freedom, the enemy of my very existence, of the existence of my race, and of my adopted country?

Observe to what an extent run the claims of the British government. England claims, in the enforcement of what she calls a right, that several millions of the subjects of the United States are her subjects, and defiantly in proof of this has convicted me, with others, to the doom of penal servitude, after coquetting with Mr. Johnson, Mr. Seward, and Mr. Adams for five months about my release, for an occurrence which took place in Ireland when I was in America; thereby enforcing her claim on my allegiance to the letter. I cannot but admire England's independence. Has the chivalry of America departed? And yet, gentlemen, England goes still further in her claims. I find there is yet another of her laws which even claims the children and grandchildren of British subjects born in America as subjects. An eminent commentator on this law says: "But by several more modern statutes these restrictions are still further taken off, so that all children born out of the King's ligeance, whose fathers or grandfathers by the father's side were natural-born subjects, are now deemed to be natural subjects themselves to all intents and purposes, unless their said ancestors were attainted beyond the seas for high treason."

I admit that England does not presume to enforce this last quoted statute at present, but should she be permitted to enforce the first with impunity, the assertion or non-assertion of the other will be with her a question of policy, not of principle, and she may at any time claim half the population of the United States as her subjects. Now, gentlemen, as I have before mentioned, my case is plain. I have quoted the law under which as a British subject I stand convicted for "treason-felony" on the evidence of a spy and perjured informer, and for being a member of an Irish national organization in America, as sworn, in 1863. You know also, gentlemen, the rights guaranteed to me by the Constitution of the United States and the naturalization laws. Am I under those laws a citizen of the United States and entitled to her full protection, or am I under the English statutes a British subject and amenable to English laws in America? I will state, gentlemen, in conclusion, that even as a British subject I have violated no British law. My name is connected with an alleged expedition, but there is not one iota of corroborative evidence to identify me in connection with it, as your honorable body may have learned from the published evidence long before you received this communication; and even if it did exist, the very evidence produced, purchased and perjured as it was, proved that if a hostile design ever existed it was abandoned, and that the parties were thrown on the shore by stress of weather and starvation. The only case they have established against me was that I landed in Ireland from a fishing boat, which fishing boat took me off a vessel out at sea. No documents, no arms; I attempted no disguise; had no connection with any person or persons in Ireland.

I again, gentlemen, repeat that I am suffering in an English bastille the most exasperating, degrading, and servile tortures, for no other proven offence, before my God, than that the paid informer Corydon swore that he knew me in America to belong to an Irish national organization in America.

Gentlemen, in the name of our common country, in the name of freedom, in the name of God, I ask of you to take hold of this matter vigorously, and compel England to expunge from her law books every presumption bearing on the rights of the American citizen. If she does not do it, wipe her from the face of the earth, and God will bless you.

JOHN WARREN.

Mr. Seward to Mr. Adams.

No. 2105.]

DEPARTMENT OF STATE,

Washington, December 2, 1867.

SIR : Mr. West, consul at Dublin, in answer to the request of Colonel Warren's counsel that he would apply to the Crown authorities for a copy of the official report of his trial, stated that he had no authority to do so, and reports the correspondence to this department. You will instruct Mr. West to make the desired application, and transmit the report when received to this department.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1489.]

LEGATION OF THE UNITED STATES,

London, December 6, 1867.

SIR : I obtained an interview on Tuesday last with Lord Stanley for the purpose of renewing the representations as directed in your despatch No. 2087, of the 5th of November, respecting the difficulties growing out of the state of things in Ireland. I explained the precise nature of the question as applicable to naturalized American citizens. I read to him the chief passages of your despatch, and concluded by asking him to reconsider the former decision of the government so far as it relates to supplying better security to our citizens in that island.

His lordship asked me if I had any special measures to suggest. I said, nothing beyond that already specified in your despatch No. 2049, of August last, and the later one already referred to. He said that passports had long since proved to be of little avail. Unless the descriptions were very accurate they were easily transferred from hand to hand; besides which, they had become rather obsolete here. At any rate, it seemed to him that whatever evidence was necessary to identify citizens was a thing to be supplied in America, and therefore should be suggested from there. He asked me some questions about the forms of naturalization. I said that they always involved the issue of formal certificates in the last stage of the process. Why, he asked, would not that do? I said it might, in most cases, provided it was given to be understood that they were essential as a protection. But, in course of time, many were lost by neglect to preserve them, or other accident, and it was a long process from here to procure official copies. There was also a class of cases of children under age at the time of naturalization who grew up and claimed citizenship by virtue of the act of their father, without need of any legal process for themselves. That claim was recognized with us. Some cases of this kind had occurred since I had been here. There had been much trouble in consequence, and some hardship.

His lordship said he was at a loss to perceive what they could do, but he would take the matter into further consideration, and consult with Lord Mayo about it. I said that, so far as I knew, there was no case left of arrest and detention without assigned cause and provision made for trial.

The question was, therefore, at present, only one of a prospective character. His lordship said he believed this state of things would not last much longer.

I gently reminded him of the fact that this had been announced very for-

mally last year; yet, here we were. He admitted the truth of it, but rested on the discouragement incident to the failure of all the schemes.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1490.]

LEGATION OF THE UNITED STATES,

London, December 7, 1867.

SIR: A person passing under the name of Berry, or Bowry, was arrested a few days ago in the streets of this city and brought before one of the magistrates, on a charge of being concerned in the Fenian conspiracy against the government. In the course of the examination, it was sufficiently proved that his real name was Ricord O. S. Burke.

The evidence was thought sufficient to justify his solicitor in counting upon his being held for trial at the central criminal court.

I have the honor to transmit a copy of the London Times containing the report of the preliminary proceedings.

The relatives of Mr. Burke have engaged legal assistance in his behalf. But the solicitor, Mr. Norton, writes me that he has no funds with which to pay for it, and forwards an application from him for assistance at the public expense. I have written in reply to the effect that I have no funds to dispose of for that purpose, and no authority to make any engagement without instructions from my government. To this answer the solicitor has responded, by requesting me, on Mr. Burke's behalf, to apply to you for the requisite authority.

On examination of the Army Register of the United States, it appears that one Ricord O. S. Burke, whom I presume to be the same person, served in the fifteenth regiment of New York engineers, first as a second lieutenant and afterwards as captain, during a portion of the war.

On the 6th of December, 1865, he applied to this legation for advice and protection, he having been subjected to arrest and examination on his arrival at Liverpool on suspicion of treasonable designs, which he entirely disavowed.

He denied that he was a Fenian, although his sympathies were with them.

He had been released, and reported himself to be then in lodgings at No. 4, Suffolk Place, Bermondsey, London, a distant portion of the town on the south side of the river.

A passport was supplied to him, and he was cautioned to be prudent at that period of excitement, and, in case of its increasing, he was advised to withdraw at least for a season to the other side of the channel. Since that date, nothing has been heard of him until the moment of his arrest and present application.

I have stated these circumstances in full, for the purpose of providing you with all the information in my power to enable you to judge of the propriety of his application. I am moreover informed, that the trial will probably come on before the end of the month. Hence, if you should have instructions to give, it may be desirable to forward them by telegraph.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the London Times, December 2, 1867.]

THE FENIAN CONSPIRACY.

ADJOURNED EXAMINATION OF BURKE AND CASEY.

On Saturday Sir Thomas Henry sat specially at Bow street police court for the further investigation of the charge of treason-felony preferred against Ricord Burke, a colonel in the so-called Fenian army, *alias* Bowry, *alias* Berry, *alias* Winslow, and the minor charge of assaulting Inspector Thompson, of the detective force, in the execution of his duty, preferred against the above mentioned prisoner and Joseph Theobald Casey conjointly.

Mr. Poland, instructed by Mr. Pollard, of the treasury solicitor's office, appeared, as before, for the prosecution. With regard to the defence a difficulty arose, as two learned counsel were in attendance—Dr. Kenealy, who informed the magistrate that he was instructed for both prisoners by Mr. Norton and Mr. Griffiths, instructed by Mr. Ring, for the prisoner Burke. Considerable discussion arose on this point. Sir Thomas Henry pointed out that the prisoner was to elect which gentleman he considered to be his solicitor, Mr. Ring or Mr. Norton. Burke had some difficulty in making the selection. He had certainly seen Mr. Ring, but had become uneasy at that gentleman not keeping an appointment. That, however, might be no ground of blame against Mr. Ring, who might have been engaged elsewhere in his interests. Mr. Norton said he had been instructed by Casey's brother. The prisoner expressed a wish to see Mr. Ring before deciding. Mr. Ring, however, was absent, though Mr. Abrams, of Bow street, appeared to represent him, assisted by Mr. Ring's managing clerk, who said that Mr. Ring was under examination as a witness at the lord mayor's court, but would probably arrive very soon. Mr. Griffiths said that he had in his hand papers submitted to him by Mr. Ring, including notes in the colonel's handwriting. Burke requested to have them returned before he formed his decision, but Sir Thomas Henry thought the learned counsel could not be called upon to give up the documents to any one but the solicitor from whom he had received them. Both learned counsel and also Mr. Norton expressed their readiness to abide by "the colonel's choice." [It was noticed that Burke did not demur to being repeatedly called "the colonel" or "Colonel Burke," but seemed rather to acquiesce in it, replying without hesitation when so addressed.] Burke observed that he could find work for both gentlemen, and, as he could come to no decision till he had seen Mr. Ring, expressed his readiness to proceed, if they would act conjointly until Mr. Ring arrived. Dr. Kenealy, however, objected to this. He was quite ready to proceed as the colonel's counsel if it was distinctly understood that the solicitor by whom he was instructed was recognized as the defendant's attorney. Otherwise he must withdraw. The decision must be made at once.

Colonel Burke said he would elect that Mr. Norton should be his solicitor, temporarily at all events, but he should wish to see Mr. Ring at the earliest opportunity.

Sir Thomas Henry said every opportunity would be afforded him.

[In the course of the day Mr. Ring attended, and it was arranged that he should have a private interview with Burke at the close of the proceedings.]

Colonel Burke then requested that all the witnesses should be ordered out of court.

Sir Thomas Henry gave the order, but remarked that as the colonel had now accepted Dr. Kenealy as his counsel, he must leave his defence in the hands of that gentleman, who would no doubt make every application that was necessary for his protection.

COLONEL BURKE. Then I wished to be placed in a position to communicate freely with my legal adviser.

Mr. Norton accordingly changed his seat to one nearer to the prisoner's dock, and in such a position as rendered communication between them perfectly easy.

Colonel Burke then asked for "writing materials and facilities for writing," in which respect also he was accommodated.

At the request of Dr. Kenealy, the evidence of Devany, as given at the first examination, was read over by the second clerk, Mr. Humphreys.

GODFREY MASSEY was then sworn: I am a native of Ireland, and went to America in 1856. I joined the American service at the time of the civil war. I held the rank of lieutenant colonel when that war ceased. In August, 1865, I joined the Fenian Brotherhood at Houston. I took no oath or pledge. I went to New York, where I arrived October, 1866. Between those times I was engaged in a commercial position at New Orleans. I kept up my influence; was a Fenian as far as my acts went, and did as much for the cause as I possibly could do. I knew James Stephens—rather well, too. I first knew him in New York. The object of the Fenian Brotherhood was the establishment of a republic in Ireland. I first saw Stephens early in October last. He had an office at 19 Chatham street, New York. He was the chief organizer of the Fenian movement. I have heard an account from him of his escape from prison and from Dublin by the assistance of friends within and without the prison. I knew Colonel Kelly in New York about this time. He was Stephens's deputy. I knew Burke in New York; at 19 Chatham street. I don't know that he held any distinct position in the Brotherhood. I knew him as Captain Burke. I knew all three inti-

mately. I knew Stephens's private residence in East Thirteenth and West Eleventh streets I have seen the prisoner at Stephens's. I knew another person who was called Colonel Burke, (I think by courtesy,) and I gave evidence at his trial in Ireland. I knew McHafferty, Halpin, and Cluseret, who were all concerned in the movement. I gave evidence at the trial of M'Halpin. I have seen the prisoner in company with Kelly, McHafferty, and I think with Colonel Burke. I don't know that he was acquainted with General Cluseret. There was a meeting in New York, at which a discussion took place about the number of arms that could be obtained. It was a mixed meeting of military and non-military men. Burke was there, and said that he had not nearly the number of arms he expected to have. He expected a *minimum* of 30,000, and only 4,000 to 5,000 had actually been obtained. They also spoke about the rising in Ireland, which was to have taken place at the next new year. That has now gone by. That meeting was held at East Thirteenth street. A day or two afterwards a purely military meeting was held, at which the same persons were present, except the non-military men. The discussion turned on the rising, and several officers volunteered to go. I can't say if the time of the rising was fixed, but the rising was determined on, and the officers volunteered to go to different parts of England. Their names were taken down by Kelly. I was one of those who volunteered, and my name was taken down with the rest, and five days after this occurrence Stephens was repudiated because he was insincere, having deceived both officers and others, and being also grossly incompetent in a military point of view. After that, Kelly acted in his place. I left New York on the 11th of January. I was not accompanied by any of the other military men. I believe Burke had sailed previously. I landed at Liverpool and proceeded to London, where I saw Burke not more than a day after my arrival. We met near a public house, of which I do not recollect the name. I do not remember what conversation we had. We afterwards lived together at 7 Tavistock street, in one room on the top loft. I do not know that he told me he had lived there when he was in London before. We went there in January, and I left on the 10th or 11th of February, he having left some days before. He went by the name of Wallis, and I by that of Cleburne. While in London I met all or nearly all the officers that I had known on the other side, and some that I had never seen before. Among others, I met Colonel Kelly, who was lodging at 5 North crescent, Tottenham Court road. I have been there. I should know the landlord if I saw him, and should know his name. It was something like "Farrieli." (Afterwards, being asked if it was "Fredorici," the witness replied, "That is it.") He was an Italian or German. Kelly was known as "Coleman," and Halpin as "Fletcher." Kelly was the chief of the Fenian body in London, and the organization and mobilization of the forces in Ireland was intrusted to my direction. I gave instructions to Burke, appointing him to Macroom, in the county of Cork. He was to make himself acquainted with the resources of the district, and when the rising did take place, to destroy the means of communication, so as to force the regular army to march more on an equality with us. The telegraph wires were to be cut, and the railways "tapped." By that expression I mean that small breaches were to be made in the iron work, so as to render communication impossible, or delay it, but that the lines were not to be destroyed for any distance. There were other officers at Macroom, but Burke was the senior. He was to communicate with the "centres," of course, that being the only way he could make himself acquainted, as I directed him to do, with the resources of the district. A centre is the head of an organization, corresponding, you may say, with a county. I brought some money with me from America—£550 sterling in gold, which I had received from Colonel Kelly. Before Burke left I gave him from £15 to £20, and I gave sums, varying from £15 to £30, to all the officers in London. At that time I did not know which was to be the night for the rising; it was not fixed before Burke left London. After he left, I was at a meeting at Kelly's private residence. That was on Sunday, the 10th of February: Kelly was there, and also three delegates from Ireland, viz, Mahony, of Cork; Burn, of Dublin; and Arbinson, of Belfast, who constituted themselves into a directory to control the management of civil affairs in Ireland.

Being asked if he had any conversation with Burke before the latter left, the witness, with some irritation, demanded whether he was bound to state the purport of a private conversation.

Sir Thomas Henry said he certainly was; he had no privilege to suppress any portion of a conversation.

WITNESS. If I have no privilege, I shall claim it as a right.

Sir THOMAS HENRY. You have no such right; you are sworn to tell the whole truth, and you must tell the whole.

WITNESS. Then you will have to question it out of me.

Dr. KENEALY. That must be taken down.

Sir THOMAS HENRY. Of course; it is being taken down.

At Dr. Kenealy's request it was read over by Mr. Humphreys, the second clerk.

Dr. Kenealy said he thought the witness used the word "extorted."

WITNESS. I said "questioned," but I meant it in that sense.

From this point the witness answered all general questions with such curtness as to afford no intelligible information, and declined to remember anything that was not put to him specifically. On the other hand, all specific questions were objected to by Dr. Kenealy, who objected to Mr. Poland leading the witness. In each instance Sir Thomas Henry overruled

the objection, saying that if the witness was hostile, leading questions must be put. Upon this Dr. Kenealy said he did not believe that the witness was really hostile, for he must have given the information to the attorney for the prosecution, and by the course he was adopting every point of that glib statement was being put to him cut and dried, and he had only to say "yes" and "no." The witness indignantly denied that he had given the information to the solicitor to the prosecution, and declared that he did not know how they obtained it, but he was not accountable for it.

Sir Thomas Henry said the witness would be obliged to tell the whole truth at last, and he had much better give his evidence frankly, and not subject counsel to so much trouble and annoyance.

The witness did not see that. He thought it was much better that he should be questioned. The examination proceeded for some time at a very slow rate, discussions on these points being renewed at almost every question. By this tedious process the following evidence was extracted from him: "In a conversation in London Burke told me that he had been in Birmingham in the Fenian business, purchasing arms (rifles, it is understood) which had been shipped to Ireland. I do not remember that he said anything about caps or powder. He said that some of them were seized: I am not sure where, but I think he said at Queens-town. He said that he went by the name of C. E. Windsor. I do not know what the initials stood for."

At this point the discussion being renewed, Sir Thomas Henry again recommended the witness to save further trouble by stating the whole truth. It was useless to give so much trouble when he knew he must answer at last, and he was only wasting time.

WITNESS. Then if I do I must go through it from the beginning. Captain Burke said he had been to Birmingham and had purchased arms for the Fenians. He mentioned that he had obtained credit for £900. I cannot think for what time he said he had the credit. I think he did name the time, but I cannot think well enough to swear to it. I saw Fariola in London at the lodgings of Cluseret, and also in Bedford square and Great Portland street. I think it was No. 5 in the square and 137 in Portland road. I do not recollect seeing Fariola at Kelly's, but I think he had called there. Fariola was chief of the staff to Cluseret. He was usually addressed as General Fariola. I last saw him at the court-house in Dublin during the trial of General Halpin. When I left London in February I went to Dublin, having been appointed commander-in-chief there. That appointment took place at the residence of General Cluseret, at which I was not present, but was informed of it by Kelly. Two delegates and General Cluseret were there. It was a meeting of the directory. I went through the different sections in Ireland, except in the north. It was appointed that the rising was to take place at midnight on the 5th of March. That arrangement was made in London, at Kelly's quarters, by him, Kelly, and Halpin combined.

Dr. Kenealy objected to this as hearsay testimony.

The witness, with some temper, declared that it was not hearsay, as he had it direct from Kelly, and mutteringly added that the learned counsel "must have a very thick head."

Sir Thomas Henry advised the witness not to lose his temper while giving evidence.

The witness continued. On the 4th of March I was at Cork, and went to Limerick junction to make preparations for the following night. I was arrested there at 12 o'clock at midnight, on the arrival of the up train from Cork. I never saw Burke in London, but after he left Macroom I had a letter from him in London. I have not got it now, and do not know what has become of it. It is not my custom to keep such letters. I think it was dated from Waterford. I could not give its purport. I am not sure whether it was signed Wallis or Winslow. It was directed "Mr. Cleburne, 7 Tavistock street." I only know one Tavistock street, that which is off Tottenham Court road.

The witness here complained of fatigue, and by order of Sir Thomas Henry was accommodated with a seat.

Dr. Kenealy said he would reserve his cross-examination of this witness, but he should take this opportunity of asking what course Mr. Poland proposed to take with regard to Casey, who was only concerned in the minor charge.

Mr. Poland said he must admit that at present he was not prepared to carry the case further as against Casey; but from the result of inquiries which had been made by the police, he believed that if Casey were again remanded, the case as against him might hereafter assume a more serious character.

Sir Thomas Henry said there was no doubt that Casey had assisted Burke in an attempt to escape.

Dr. Kenealy asked if Casey was to be included in the charge of treason-felony.

Sir Thomas Henry certainly inferred from the observations of Mr. Poland that it was not improbable.

Dr. Kenealy said that if so there ought to be some evidence to show a foundation for the charge.

SIR THOMAS HENRY. Not when counsel for the prosecution say that probably such evidence will be forthcoming hereafter.

DR. KENEALY. But he is being kept in prison.

SIR THOMAS HENRY. He would be liable to some imprisonment for the assault. If there is no ground for the graver charge I shall take his detention into account in dealing with the assault.

Dr. KENEALY. With that assurance from your worship I can have no further objection.

Mr. Poland then called GEORGE KYLOCK. I am a percussion-cap and ammunition maker and general dealer in fire-arms, at 45 Little Hampton street, Birmingham. I carried on that business in December, 1865. I know the prisoner Burke, though not by that name. I first saw him at my office, I believe, December 23. He had been before and spoken to my assistant about a purchase of things which he had in stock. He mentioned to me that he had agreed with her for the purchase of a quantity of percussion caps. He saw me to settle the price, as the girl could not complete the transaction without me. He gave the name of Edward C. Winslow. He was stopping at the King's Head. At the time, or shortly afterwards, he had a place at 64 George street. He did not tell me who he was, except that he represented a mercantile firm. At other times he mentioned that there were three in the firm. The first lot I supplied him with were 250,000 small percussion caps, and forty of Lemaître and Girard's ten-shooter revolvers. There were also cases for the percussion caps. The cost of that first lot was £385 7s. 6d. The military percussion caps were in twenty cases, lying at the station to my order. When he paid me the money I gave him the order to receive them. He paid me the money on the spot. The order was in the form of a letter to Crowley & Co., the agents of the railway company. The forty revolvers were delivered to his man Mallidy. I have his receipt here. I think he said he wanted a lot of revolvers. I said I could get them. I bought a lot from different makers, and he examined them at my office. He did not say what number he should want; I understood it would depend upon the price and quality; I understood a few hundreds, as many as could be got at a certain price and quality. You cannot get an unlimited number. I went with him more than once to Mr. Hill, a pistol-maker, very soon after I first saw him—possibly the same day. We went to see what he had in stock. Winslow looked at a good many lots. I think his object in going was to point out to me the articles suitable for his trade. I made the purchases from Hill. I do not think Winslow bought anything direct from him. I have furnished to Mr. Pollard, of the treasury solicitor's office, a list of all the goods supplied by me to the prisoner. From first to last—that is, between the 23d of December, 1865, and the 13th of January, 1866—I sold him 657 revolvers. The gross price of the goods supplied was £1,972 odd, which was all paid but £18. That was for some cases which were to have been returned, and, as he did not send them back, they were charged to his account. All the goods were paid for. Besides the pistols there were some rifles, and also the implements that usually go with fire-arms; bullet moulds and the keys to lock and unlock the guns, if you regard them as separate articles from the guns. The payments were invariably made in cash; the money was paid when the invoice was made out, with one exception. I had asked him to have a lot of rifles, and one day he came to me in a hurry and said he would take the lot, but I must give him credit till Saturday. I think this was on Thursday. At first I demurred to this, but we had become rather intimate since I first met him, and I had taken a liking to him from his agreeable manner. He is a particularly agreeable fellow; so, after some talk, I said I would run the risk, and let him have them. The price was 21s. 6d. each, and they came to £698 1s. 6d. The entry in my book is dated the 28th of December. I think that is the correct day. There were other goods ordered the same day, but they were paid for at the time. He was to have come to my office to pay for them on the Saturday, but he did not come. On Sunday, feeling rather uneasy at having this £700 floating about, I rode into town and called upon him at the King's Head Hotel in Worcester street, where he was staying. He said he was very glad to see me to pay me the money. I said I was equally glad to see him. He paid me the money. The rifles were packed in cases of twenty, and the revolvers were loose, without any cases at all. The revolvers were delivered at his place in George street, to his man Mallidy. The witness here perceiving that the prisoner Casey was watching him with a somewhat peculiar smile, or rather grin, on his countenance, exclaimed, "I believe that is Mallidy! Now I see him laugh I believe it is the man."

After a pause, during which the witness contemplated intently the no longer laughing face of Casey amidst the most profound silence,

Dr. Kenealy said this was a most serious matter, and he hoped the witness would be careful.

In answer to questions from Mr. Poland and Sir Thomas Henry, the witness added: I could not swear to him, as I took so little notice of him there. It is one of the men I saw at Winslow's, if it is not Mallidy, but I think it is he. There was an inscription over the door, "C. E. Winslow & Co., merchants and commission agents," I think. I am not quite sure about the word "merchants." Winslow never told me he could make any composition. I have heard him speak about a sort of fire. When some stuff was seized at Liverpool I said "That must be the stuff that Winslow was always talking about," and that was the reason I first suspected that he was a Fenian. I don't recollect any conversations. I only remember his talking about it; not what he said. It was called "Greek fire." I think he said he knew how it was made. After he left Birmingham I received from him the two letters produced:

"JANUARY 29, 1866.

"DEAR SIR: I do deeply regret that I can't give you some orders. My messenger has returned from London and brought me no definite satisfaction. In short, I shall be compelled to go there and attend to matters personally. My health is improved, so that I think

I may come straight soon. I am, however, positive on the subject of continued trade with you. Please present to Mrs. Kylock my best wishes for welfare of self and little Ellen, and receive the assurance of continued business activity, though postponed, and of personal friendship.

"E. C. WINSLOW."

"LONDON, February 5, 1866.

"DEAR SIR: I would have written ere this, but certain business here and in Glasgow kept me constantly occupied, added to which I may plead an illness of six weeks. I hope yourself, your lady, and little Ellen are quite well. Please present to Mrs. Kylock my most sincere wishes for welfare and happiness. I want a full quotation of prices, embracing Enfields, Whitworths, carbines, pistols, revolvers, size and quality, and of all the accompanying materials, as I expect to do a fair business with you very soon, and want to be posted up. How is Hill? Has he ever got over that interesting difference of opinion which existed between you? I don't quite forget that pistol you promised me. By Jove! I must have that when I see you next. I am going down to Woolwich, and will be back in three or four days' time. I want you to write me by return of post. I will stop at the International Hotel, near the Southeastern Railway station, London bridge, and will expect to find a note from you when I return. Pardon haste. Kind regards to Ruberry.

"E. C. WINSLOW,

"('The man of many apologies.')

The witness also produced a pressed copy of a letter from himself to the prisoner, replying in equally friendly terms, and enclosing the required quotations. The Mr. Ruberry referred to was a private friend of witness.

MR. WILLIAM JAMES HILL, of 9 St. Mary's row, Birmingham, gun and pistol maker, stated: At the end of 1865 Mr. Kylock came to my place with the prisoner, who said his name was Winslow, and asked what quantity of revolvers I had got, and what were the lowest prices. I told him the prices, and he asked if that would be the lowest if he took a large quantity, and what I considered a large order. I said "one or two hundred." He replied, "I don't consider that a large order; I can give you a far larger order than that." He then asked what quantity I could supply by the following Wednesday. I told him, and he desired me to send them. He said he could take any quantity I could supply for eight or nine months. I said I could let him have one hundred a week. The prisoner examined a portion of the stock. On Wednesday I sent the quantity agreed upon to Mr. Kylock's office. They were to be paid for by Mr. Kylock. I saw the prisoner a great many times. The quantities supplied by me to Mr. Kylock for the prisoner were: On the 27th of December, 135; on the 29th of December, 40; on the 4th of January, 49; and on the 7th of January, 28. I made a pistol for Mr. Kylock, for a gift, for which I charged him £5 10s. That was the cost price, or thereabout. I made a larger quantity of revolvers for the prisoner, but did not supply them, in consequence of a misunderstanding between me and Mr. Kylock. I did not know what Winslow wanted the arms for, but having heard him say something about the southern confederacy, I thought it was for that.

ELIZA LAMBERT, 7 Tavistock street, Bedford square, identified the prisoner Burke and the witness Massey as having lodged there in January or February, 1866, under the names of Wallis and Cleburne. Wallis (the prisoner Burke) left first. She could not tell the date. Had no rent book. Never kept one against them. They had the front room on the third floor, for which they paid 10s. a week rent. About a fortnight after they left Inspector Clark, of the detective force, called upon her.

Mr. Poland here applied for a further remand.

Dr. Kenealy hoped the prisoners would not be remanded from week to week. The prosecution had had one week already, and surely the case might be closed at the next examination.

Sir Thomas Henry said that after the evidence which had been given that day the prosecution could hardly be accused of wasting time.

Mr. Poland said the police were still engaged in inquiries, from which further results were being obtained, and he certainly could not pledge himself to complete the case on the next occasion.

Dr. Kenealy hoped Casey would be admitted to bail.

Sir Thomas Henry could not consent to that after the recognition of Casey by Mr. Kylock.

Dr. KENEALY. But did you observe the manner in which that evidence was given?

Sir THOMAS HENRY. I did, and do not take the view of it which you would suggest.

Both prisoners were again remanded.

Mr. Seward to Mr. Adams.

No. 2106.]

DEPARTMENT OF STATE,

Washington, December 9, 1867.

SIR: Your despatch of 22d of November, No. 1484, was duly received. It is an occasion for large satisfaction that, in accordance with the instructions of

this department, you made a representation to her Majesty's government in behalf of the prisoner McCondon, otherwise known as Shore, and that he was relieved. It appears that on the most careful reflection which you could give to the matter, you came to the painful conclusion that to interpose in the same manner in behalf of the prisoner Gould would be to do more harm than good.

It is not difficult to understand the great embarrassment which surrounded that case. The crime was that of murder, and the conviction and sentence were in conformity with the municipal law. On the other hand, this offence against municipal law is very generally regarded by those who, within and without the British realm, are agitating for a change in Ireland, as an incident in a meritorious political movement. Similar conflicts of sentiment occur in every political disturbance.

The judgment of mankind is that in revolutionary movements which are carried on by large masses, and which appeal to popular sympathy, capital execution of individuals who fall within the power of the government are unwise and often unjust. Such severity, when practiced upon a citizen of a foreign state, excites a new sympathy by enlisting feelings of nationality and patriotism. The fellow-citizens at home of the sufferer in a foreign country naturally incline to believe that the just and generous principle to which I have referred is violated in his case. The soundness of this principle is quite easily understood after the revolutionary movement is ended, although it is difficult to accept the truth in the midst of revolutionary terror or violence. When the President of the United States dismissed the prosecution in the United States courts of the so-called Fenians who attempted an unlawful and forbidden invasion of Canada, and returned them to their homes at the expense of the government, and at the same time obtained, through the wise counsels of Sir Frederick Bruce and the governor general of Canada, a mitigation of the capital punishments adjudged against those who were convicted in the Canadian courts, the President adopted proceedings which have practically assured the continuance of peace upon the Canadian border. It was believed here that similar clemency could be practiced in the Manchester case with benign results. Your despatch leads us to believe that her Majesty's government was so thoroughly convinced of the necessity of pursuing a different course in that case that further interposition than that which you adopted would have been unavailing and injurious to citizens of the United States. Certainly it belonged to the British government to decide whether the principle which we invoked could be wisely applied in the Manchester case.

Under these circumstances it is necessary to acquiesce in the decision to which you arrived in the matter, after exercising a discretion which in no instance during your long public service has failed to command the approval and commendation of this government.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1492.]

LEGATION OF THE UNITED STATES,

London, December 11, 1867.

SIR: I have the honor to transmit a copy of the London Times of this morning, containing a communication from M. Vernon Harcourt, who is well known under the signature of Historicus, and also a leading article in the editorial columns, on the subject of the law of expatriation. The mode in which this difficult matter is treated by both writers affords encouragement to the belief

that something may be done to harmonize the rule as well here as at home with one system. In my opinion nothing is more desirable in order to remove amicably the causes for future collision on the subject.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington.

[From the London Times, December 11, 1867.]

WHO IS A BRITISH SUBJECT?

To the Editor of the Times:

SIR: I am unwilling, upon the strength of a telegraphic report, to animadvert upon the language attributed to the President of the United States. I shall say nothing, therefore, of the tone or the method in which a matter of the most supreme consequence seems about to be introduced to our attention. Our business in any case is to understand our own situation and to take care that we, at all events, are in the right.

It is quite plain that we are about to be called upon, courteously or otherwise, to consider the principles on which we found the rights and assert the claims of British citizenship. This is a subject so complicated in the double bearing of its legal and political character that I cannot attempt in the space I could ask at your hands to treat it in a complete and satisfactory manner. I think, however, that I shall be able in a moderate compass to satisfy your readers that there is much in the existing condition of the question which requires mature revision and fundamental reform.

And first let us ascertain who, according to the law of England, is a natural-born British subject, owing allegiance and entitled to the protection of the British Crown.

I. Every man born within the dominions of the Crown is born within the ligeance of the Crown and is a British subject, and that whether the parents are British subjects or aliens.

This was the simple doctrine of the common law. A child born of foreign parents in England was an Englishman. A child born of English parents abroad was a foreigner. (I state the matter broadly, without reference to the limitations of the statute of Edward III, which in some respects may be considered as in affirmation of the common law, and was an enabling not a compulsory statute.) In the reign of Charles II, a special statute was passed to naturalize the children born abroad to Englishmen who had fled to foreign parts in the Commonwealth.

II. By a statute of George II, (substantially re-enacting a statute of Anne,) all children of natural-born British subjects born abroad were made natural-born subjects, (4th of George II, cap 21, A. D. 1731):

"All children born, or which shall hereafter be born, out of the ligeance of the Crown of Great Britain, whose fathers were or shall be natural-born subjects of the Crown, are hereby declared to be natural-born subjects of the Crown to all intents, constructions, and purposes whatsoever."

The quality of citizenship was carried on to the next generation by a statute of George III. The preamble is so remarkable that I think it right to call special attention to it, (13th of George III, cap. 21, A. D. 1773.) After reciting that divers natural-born subjects of Great Britain have for lawful causes, especially for carrying on commerce, been obliged to reside abroad, the preamble proceeds, "And whereas it is equally just and expedient that the kingdom should not be deprived of such subjects, nor lose the benefit of the wealth which they have acquired, and therefore that not only the children of such natural-born subjects but their children also should continue under the allegiance of his Majesty," then enacts that the children of fathers made British subjects by the act of George II (*i. e.*, the grandchildren of a natural-born British father) "are hereby declared to be natural-born British subjects to all intents, constructions, and purposes whatsoever."

Now, the character and effect of these statutes is singular in the extreme. The persons with whom they deal are persons who, but for those statutes, would be foreigners. Yet, by a municipal law of this country, with which they have nothing to do, we impose upon them, without any option on their part, a citizenship which they very possibly do not at all desire. If the statutes had been of an enabling character alone, or which conferred privileges without imposing liabilities, the thing would have been intelligible; but the words of the preamble I have cited and of the enactment forbid such an interpretation. I will put a case—of course an extreme one—to test the extent to which the English doctrine of citizenship and allegiance is carried. Suppose the wife of a Frenchman, (who himself has never left France,) travelling in any part of the British empire, is there delivered of a child—that child, though it is conveyed the next day to France, and never revisits British soil, is forever a British subject, and by our law owes an indelible allegiance to the British Crown. But that is not

all; by the statute of George II this man's children are all likewise created natural-born British subjects, and by the statute of George III his grandchildren likewise. Thus it will be seen that the accident of a premature delivery will have created, it may be, fifty natural-born British subjects, who will have all the rights and all the liabilities of English citizenship, though they may have less than nothing in common with the interests of the English empire. Now, suppose one of these fifty grandchildren to be taken in arms in a war between France and England, and to be indicted here for treason against the British Crown. I know no means by which, in the face of these statutes, he could plead that he was not a natural-born British subject. It may be said that no such indictment would ever be preferred, and that is certainly true. But is it not a good argument against the continuance of a law, that it is one which you would never venture to enforce? It may be remarked, however, that at this moment a gentleman holds his seat as a natural-born British subject in the House of Commons whose citizenship was affirmed by a decision of an election committee to rest on the very same foundation as that of the grandchildren I have supposed. So much for the quantity of British citizenship, which I think it will, on reflection, be admitted is scattered broadcast by our present law in a somewhat profuse and inconsiderate degree. Such citizens may well ask, "What have we to do with England?" and England may well ask, "What have I to do with such citizens?"

Now let us examine a not less important point, the quality of British citizenship. Its characteristic and distinctive principle is that of indelible and indefeasible allegiance. The doctrine is stated by Blackstone in all its breadth. But when he affirms that "it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former," he lays down a proposition which cannot be maintained. I fear I shall be thought by some to intrude on sacred things when I lay profane hands on the time-honored maxim, "*Nemo potest exuere patriam*;" but when the soundness of the doctrine is challenged we must see if it is capable of being sustained. Now, so far from this maxim being, as Blackstone asserts, a "principle of universal law," the principle of universal law is exactly the reverse. The doctrine of that great people who, beyond all others, had cultivated the arts of empire and perfected the science of law is set forth in a well-known passage of Cicero:

"Ne quis invitus civitate mutetur; neve in civitate maneat invitus. Hæc sunt enim fundamenta firmissima nostræ libertatis, sui quemque juris et retinendi et dimittendi esse dominum."—*Orat pro Balbo*, cap. 13.

How far from the truth it is that the restrictive principle which the English law has borrowed from the feudal system ever obtained among modern nations sufficiently appears from the following passage of Bynkershoek:

"Ubi ea prohibitio non est, ut non est apud plerasque Europæ gentes, subditis licebit, ut ipse quidem opinor, civitatem suam relinquere, in aliam migrare et ibi sub alio Principe militare. Si ut modo dicebam, non sit lex quæ prohibeat utique licet subditi conditionem exuere et civitatem ut lubet mutare. Juris publici scriptores uno ore in id consentiunt neque dissentit Grotius, apud Moschos tamen illud non licere addit ibi Grotius; *non licere etiam apud Chineses et Anglos*, earum gentium sententia est, plus semel publice testata. *Et ubique licet ubi civitas non carcer est.*"—Q. J. P., cap. 22.

The reader will not fail to observe the covert sarcasm which is conveyed by coupling together the English and the Chinese as joint tenants of a doctrine which is said to be held by no nation where the state is not a jail.

I could, if need were, multiply authorities to any extent, from Bynkershoek down to Wheaton, to show that the maxim of indissoluble allegiance has no place in the doctrine of public law. But it is unnecessary to do so, nor no modern jurist will be found to dispute the assertion. The truth is this doctrine had its origin in a system which is obsolete, and found its application in a condition of society which has passed away. The feudal tenure, when every man held mediately of some lord, and ultimately of the King, did, in fact, convert the state into that *carcer* at which the Dutch jurist sneers. With the exception of the few persons who resided abroad for commercial objects, Englishmen in the middle ages seldom left the country for any legitimate purpose. Those who withdrew themselves from the realm were regarded as persons who sought to evade services which were due from them, and deserters from the standard to which they could at any instant be summoned. The obligations of feudal service have disappeared, and the principles which pertained to it have become antiquated. But this is not all. There has arisen a state of things in modern society to which our forefathers were strangers. That great and never-ceasing tide of emigration, in which the sons of our soil seek in other lands a fortune which the limited resources of their own country denies them, is a phenomenon for which the conceptions of the feudal law have made no provision. The consequence is that we find ourselves in the presence of political facts which are wholly irreconcilable with our legal theory. It is in vain that we proclaim the doctrine, *Nemo potest exuere patriam*, while year by year thousands and tens of thousands of our subjects are transferring their allegiance to other governments and incorporating themselves in other states. These are facts which the technicality of the law may refuse to recognize but of which an enlightened statesmanship must needs take account.

And, in fact, we have never, and do never, politically attempt to enforce the theory of our

law. So long ago as the case of *Æneas Macdonald*, the English government shrunk from carrying into execution the sentence of the law. Macdonald was a native of Great Britain, who had received his education from his early infancy in France, and spent his riper years in a profitable employment in that kingdom, and had accepted a commission in the service of the French King. Having, while acting under that commission, been taken in arms—of course in a legitimate war—against the King of England, he was indicted and convicted of high treason; but he was afterwards pardoned on condition of his leaving the kingdom forever. The logical consequence of this ill-omened doctrine was the immediate cause of the unhappy war with America in 1812. In that war, acting upon this theory of citizenship, the English government threatened to punish as traitors its native subjects naturalized in the United States and taken in arms. This menace was met by the arrest of British officers as hostages, on whom the United States announced their intention to retaliate. The English government shrunk from carrying out their threat, and these “natural-born British subjects” were afterwards included in the cartels of exchange. These are instances in which the attempts to enforce the doctrine of indissoluble allegiance has broken down. It would be easy to cite many others, and to imagine an infinitude more. Indeed, when we remember that the English law regards not only every person born in any part of the British empire, but their children and grandchildren as British subjects, owing allegiance to the British Crown, and when we consider how considerable a fraction of the whole population of the United States occupy this situation, the results of the doctrine would be positively ludicrous if they were not imminently dangerous.

I need hardly say that in practice no English government acts upon the legal theory. In the late war in the United States, many persons sought to escape from the conscription on the plea that they were British subjects; but I believe that the English government never attempted to interpose its offices in the case of persons who had clearly exhibited their intention to adopt the nationality of the United States. If the legal theory were adhered to, it would be a curious subject of inquiry how many persons in the American armies on both sides of the late war would be liable to an indictment in this country as natural-born British subjects for having taken service with a foreign belligerent.

The evil of the present state of things is that the only principle of law to which the English government can appeal is one on which it cannot in practice take its stand. To treat as British subjects all whom the law calls British subjects is simply impossible. But short of this, whom is it so to treat or not to treat? That is a question of a most embarrassing and dangerous kind, which it has to solve at its own discretion, without the guidance of any fixed principles or settled practice. In the year 1795, one of the judges of the Supreme Court of the United States, in the great case of *Talbot vs. Jansen*, (3 Dallas's Reports, p. 154,) thus expressed himself:

“A statute of the United States relative to expatriation is much wanted, especially as the common law of England is, by the constitution of some of the States, expressly recognized and adopted. Besides ascertaining by positive law the manner in which expatriation may be effected, it would obviate doubts and render the subject notorious and easy of apprehension, and furnish the rule of civil conduct on a very interesting point.”

It is a singular circumstance that though seventy years have elapsed since this judgment was pronounced, America is as much as ever, and almost as much as England, without a practical doctrine on this important point. The real situation of this question in America, and the conflict which appears to exist between the judicial and executive doctrine on the subject, are too important to be dealt with now, and I must reserve the fuller discussion of them for another occasion.

But, then, it will be said to what purpose attack the existing doctrine unless you are prepared to indicate the principles on which it should be reformed? I entirely admit the justice of the challenge. Nor would I have stated the objections which may be urged against the present state of things, unless I thought I saw my way clearly to a better system. No one will dissent from the observation of Chancellor Kent, “that the doctrine of final and absolute expatriation requires to be defined with precision, and to be subjected to certain established limitations, before it can be admitted into our jurisprudence as a safe and practicable principle, or laid down broadly as a wise and salutary rule of national policy.” This is not the place or the occasion to discuss in detail those requisite definitions and limitations. But it will not be difficult to point out the general principles by means of which the whole question might be placed on a solid and practical basis. I would found the doctrine of British citizenship, not on the feudal dogma, “*Nemo potest exuere patriam*,” but on the enlightened maxim of the Roman law, “*Ne quis in civitate maneat incitus*.” For why should we confer the privileges and impose the obligations of citizenship on those who do not desire the one or deserve the other? Is it not more consistent with the dignity of our empire as well as with the safety of our policy that we should regard, and cause others to regard, our citizenship as a privilege to be sought rather than a burden to be evaded? Nor have we far to seek for an example which may serve, if not as a precise model, at least as a most instructive lesson. In the Code Napoleon, that masterly system drawn from the fountains of the Roman law, and accommodated with rare sagacity to the conditions of modern civilization, we shall find reduced to practice a theory of citizenship exactly the reverse, and, I venture to think, one far to be preferred to our own.

In the first place, the French doctrine avoids the preposterous consequences of making citizenship dependent on the mere local accident of birth. A stranger born of foreign parents in France is not manufactured by the act of the law into an involuntary French citizen. He enjoys the capacity of citizenship if he elects on his majority to become a Frenchman, and testifies his intention to make his home in France. Thus two things must concur in the case of a foreigner born in France—a deliberate option and a permanent domicile.

The difference is not less marked when we consider the rules according to which French citizenship is forfeited. The following articles of the Code Civil sufficiently explain themselves:

“ART. 17. La qualité de Français se perdra, 1o, par la naturalisation acquise en pays étranger; 2o, par l'acceptation non autorisée de fonctions publiques conférées par un gouvernement étranger; 3o, enfin par tout établissement fait en pays étranger sans esprit de retour.

“ART. 18. Le Français qui aura perdu sa qualité de Français pourra toujours le reconquer en rentrant en France avec autorisation, et en déclarant qu'il veut s'y fixer et qu'il renonce à toute distinction contraire à la loi Française.

ART. 21. Le Français qui sans autorisation prendrait du service chez l'étranger ou s'affilierait à une corporation militaire étrangère perdra sa qualité de Français.”

The principle on which these rules are founded is simple, and, I think, sound. So far from attempting to enforce an involuntary citizenship, they declare that all acts which indicate a deliberate intention to withdraw from the state operate on the part of the subject in forfeiture of his privileges as a citizen. France disclaims all part in a citizen who withdraws himself from her political communion in favor of a foreign state. It is not the subject who casts off France, but France who casts off the subject. Here again it will be observed that deliberate domicile, and not accidental birth, is made the governing test of citizenship. France confers the great privilege of her citizenship upon those who dwell within her borders, if not in body at least in spirit; she does not seek to detain the reluctant fugitive in involuntary fetters. She does not desire to number among her sons men who in a sense very different from that of Goldsmith—

“Still to their *country* turn with ceaseless pain,
And drag at each remove a lengthening chain.”

This letter is already so long that I cannot venture to enlarge on details. I believe the time is arrived when this question must be dealt with in a large and enlightened spirit. I am sure that the whole matter must be reconsidered, and that when reconsidered it will be found that the whole system must be reconstructed. That reconstruction might be founded upon a few very simple principles, such as the following:

I. With respect to the acquisition of citizenship:

1. British citizenship should belong, as of course, only to persons born of British parents domiciled in the British dominions.

2. The children born to foreigners in the British dominions should, as in France, have the *capacity* to take up their citizenship.

3. As to descendants born abroad of English parents who are domiciled abroad an election should be given to become citizens, to be testified by certain prescribed formalities.

II. With respect to *expatriation*:

1. Every British subject should be allowed to withdraw himself from the State by some formal act disclaiming his citizenship.

2. Certain acts should be defined as constituting in themselves a forfeiture of citizenship, whether so disclaimed or not.

It would be necessary, of course, to make provision against a fraudulent expatriation made for the express purpose of injuring the native state, and also for the *status* of the expatriated citizen in case he returned to his former home. It must be quite obvious to all reflecting persons that, unless some great mischief is to happen, a definite understanding must be come to between the governments of England and America as to the political *status* of that vast population of English origin and of American domicile which is peopling the further shores of the Atlantic. The doctrine of the English and the American common law is wholly inadequate to solve the question. The present solution of things is irrational and intolerable. While the British law asserts the doctrine of indissoluble allegiance, the American Constitution already demands of the emigrant in the naturalization oath an abjuration of all foreign allegiance. The doctrine of a permanent double allegiance is legal fiction and a political absurdity. It is fraught with every sort of embarrassment to governments and every species of injustice to subjects. To attempt to enforce against America the doctrine of the Norman lawyers would be a greater blunder than any committed by Lord North.

Do not let us be deterred from dealing with this matter by any notion that it would embarrass the action of the government with respect to the unlawful enterprises of the Anglo-American Fenians. The effect would be exactly the reverse. The more clearly such men are recognized as American citizens the more directly responsible the American government would be for their conduct abroad; and I need not say that for their conduct in this country foreigners are as directly amenable to our laws as native subjects. As to the question of the

jury *de mediatate lingua*, the practice is of doubtful expediency; it is the creation of a statute, and might be abolished by the same authority which created it.

Lord Stanley has shown himself not unwilling to approach great questions in a spirit of courageous conciliation. Depend upon it no English minister ever had a greater opportunity of removing an inexhaustible source of misunderstanding and of danger than is offered in the settlement of this question. We have an immense advantage in the discussion of this matter with America in the fact that not only these people, but their law has a common origin with our own. On this subject they have little room to reproach us with a doctrine which so nearly approximates to theirs. I believe that a mixed commission of English and American lawyers and statesmen would without difficulty arrive at a common basis which would place this paramount subject on a satisfactory footing. If modern civilization means anything at all, it surely means that nations should be enabled in free and friendly debate to adjust the spirit of their laws to the necessities of modern society and the accommodation of conflicting claims. In laying down by mutual agreement the principles of an international code of citizenship, the justice of which both parties would recognize, we should give to the governments of both countries a firm and definite basis for their policy, to the subjects of both nations a new guarantee of their liberties, and to the world a fresh security for peace.

I am, sir, your obedient servant,

HISTORICUS.

TEMPLE, December 7.

EDITORIAL.

A short paragraph in the summary of President Johnson's message is the text of a suggestive letter on personal allegiance, which appears in another part of our impression. According to the telegraphic report, the President "urges Congress to declare that the naturalization of a foreigner as a citizen of the United States absolves the recipient from allegiance to the sovereign of his native country." We are unwilling to believe that Mr. Johnson has recommended Congress to assume a function which is manifestly beyond its competence, or that Congress will commit itself to a declaration in this naked form. It is within the power of any national legislature to make laws for the naturalization of foreigners. The legislature of the United States is authorized to do so by an express clause of the federal Constitution, in pursuance of which it already requires aliens claiming American citizenship to declare on oath that such is their intention, and to renounce forever all foreign allegiance. So far the action of Congress has been perfectly constitutional and consistent with the axioms of public law. It is for the United States courts, and for them alone, to decide what effect such a renunciation may have within United States territory. Their jurisdiction, however, can extend no further. It is for the courts of England, France, or Prussia, as the case may be, and for them alone, to decide whether an English, French, or Prussian subject can so divest himself of his nationality by the process of naturalization in America, as to place him in the position of a foreigner on his return to his native country. This rule, founded alike on reason and necessity, is so well understood, and has been so emphatically asserted by American jurists, that it will hardly be questioned by Mr. Johnson or Congress. The object of the President being, as we presume, to revise those doctrines, common to the jurisprudence of both countries, which have hitherto governed the rights and liabilities of naturalized citizens, we may expect that our own government will be invited to join with that of the United States in establishing a new basis for legislation on the subject.

The logical consequences of these ancient doctrines are well illustrated by our correspondent Historicus. The maxims of common law—*nemo potest exire patriam*—*jus originis nemo mutare potest*—*qui abjurat regnum amittit regnum, sed non regem*—may be traced back to an essentially feudal conception of personal allegiance. As interpreted and extended by statutes, they go the length of including among "natural-born subjects of the Crown, to all intents and purposes whatsoever," not only all persons born in the United Kingdom, but even the children and grandchildren of such persons, though themselves born abroad. Assuming that allegiance "for all purposes" must involve all the obligations of allegiance, it would doubtless follow that a Frenchman whose grandfather might have been accidentally born in England would be liable to a prosecution for treason if taken in arms against England. That a natural-born subject cannot bear arms against his parent state in the event of war has, indeed, been positively laid down in a famous case, and what appears to be a monstrous, though inevitable, result of statutes passed in the last century, was actually affirmed by Lord Bacon in the reign of James I. It is, however, much easier to reduce *ad absurdum* this principle of indefeasible allegiance than to show that "the principle of universal law is exactly the reverse." Even municipal law must always be construed with strict reference to the subject of decision, and if there be such a thing as a proposition of universal law, it can only be stated with extreme qualification. Cicero may disclaim, on behalf of the Roman Commonwealth, any right to retain the unwilling allegiance of subjects, and passages may be quoted to the same effect from modern publicists. We cannot, however, conclude that a Roman citizen who should have cast off the *civitas* and taken service under some enemy of Rome, would have been held exempt by Roman judges from the

penalties of treason; nor are we aware that any great publicist has maintained (to borrow Wheaton's language) that "*a natural-born subject of one country can throw off his primitive allegiance, so as to cease to be responsible for criminal acts against his native country.*" It so happens that when Mr. Wheaton himself was resident at Berlin, he refused the protection of his government to a Prussian naturalized in America, who had been required to perform military duty in his native country. "Having returned," he said, "to the country of your birth, your native domicile and national character revert, (so long as you remain in the Prussian dominions,) and you are bound in all respects to obey the laws exactly as if you had never emigrated." It may be said, of course, that he was bound to act according to American law, which here coincides with our own, but the fact of this coincidence having been preserved, is in itself an evidence of some value. A nation created and recruited by emigration would hardly have acquiesced so long and so patiently in the English theory of allegiance, had an alternative theory of higher authority and far more favorable to American interests been known to the great expositors of her law. The United States protested, indeed, and with good reason, against the vexatious right of visitation and search claimed by this country, for there their territorial sovereignty was impugned. But it remains to be shown that on that or any other occasion they have insisted, in diplomatic negotiation, on the absolute defeasibility of citizenship.

The important question, however, is one of policy rather than of law, and we freely admit that, on grounds of policy, not to say of common sense, the argument for revision is irresistible. There are certainly hundreds of thousands, and probably millions, of citizens of the United States whom our law regards as British subjects to all intents and purposes whatsoever. No statesman can justify such an anomaly, which, it must be remembered, has two aspects. If all these Irish emigrants owe full allegiance to her Majesty, it may also be doubted, at least, whether they are not entitled to our protection against conscription, yet it would have been utterly impossible for our minister at Washington to grant them such protection during the late American war. In short, our present theory is quite untenable when any practicable strain comes to be put upon it, and, as Historicus justly contends, its maintenance may at any moment become the source of very serious embarrassment. We see, then, no good reason why the British government should decline any friendly overtures that may be made by the United States with a view to its amendment. Whether we can adopt the principle *ne quis in civitate moneat irritus* without some reservation is a matter that will require to be considered. The act of expatriation should at all events be deliberate and well-attested, and our correspondent himself contemplates "provision against a fraudulent expatriation made for the express purpose of injuring the native state." For offences committed within the United Kingdom, foreigners are already amenable to British jurisdiction by virtue of what lawyers call a temporary allegiance. They can be prosecuted, therefore, under the treason-felony act for crimes committed in Ireland, without reference to their nationality, and this is, after all, the chief safeguard against Fenian designs. For security against raids organized in America we must rely mainly on the good faith of the United States government, and this makes it the more expedient that we should meet them on this point in a spirit of conciliation.

Mr. Adams to Mr. Seward.

No. 1495.]

LEGATION OF THE UNITED STATES,

London, December 14, 1867.

SIR: In accordance with the directions contained in your despatch No. 2105, I have written to Mr. West to apply for an official report of Captain Warren's trial. By a letter received this morning from him, I learn that he has already received and forwarded an official copy of the indictment.

The solicitor of Colonel Nagle has applied to know whether the government of the United States will assume the expense of his defence on his trial at Sligo. He proposes to bring down what he calls *a special bar* from Dublin, which will naturally create very heavy charges. As there would be time to hear from the department, and I have great reluctance to assume the responsibility of large outlay of money for the government, I wrote to him that I would obtain your instructions. The assizes will probably be held in February.

I transmit herewith a copy of the London Times of this morning, containing a report of an attempt, made by certain parties supposed to be connected with the Fenian organization, to blow up the Clerkenwell prison wall, for the purpose of effecting the liberation of Colonels Burke and Casey. The former is the person about whom I wrote in my despatch No. 1490, of the 7th instant.

The object was not attained, but the incidental consequences to innocent persons have been fearful.

It is much to be apprehended that these repeated attempts may cause a state of feeling in the English population which will not be satisfied with the slower process of justice, and may in its turn wreak its vengeance upon wholly innocent parties. The government, fearful of such consequences in the great towns, has already prohibited all further demonstrations of the kind that took place in London and Dublin, on the execution of the Manchester prisoners. It is tolerably clear that no such manifestation could be repeated here without danger to the public peace. The Orange feeling in the north of Ireland is also becoming very much exasperated.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the London Times, December 14, 1867.]

A crime of unexampled atrocity has been committed in the midst of London. We are not a sanguinary people, and acts of wholesale murder are rare in our annals. Till yesterday we could not have believed that there lived among us men capable of planning such a deed as has just spread destruction over a whole neighborhood. The infernal machines of 1800 and 1835 have been rivalled by the diabolical device of the Fenian conspirators. In order, as it is supposed, to rescue two of their accomplices who had been remanded by a magistrate and had been placed in the house of detention at Clerkenwell, it has entered into the minds of the rebels who are planning the overthrow of the Queen's government in Ireland to destroy the wall of the prison at the moment the prisoners were taking exercise, and to carry them off through the gap which the explosion should create. So far as regards the effect of the powder, the experiment has been horribly successful. A vast breach has been made in the outer wall; not less than 60 feet have been blown away, and the precincts of the prison are encumbered with the ruins. Never was the tremendous power of gunpowder more clearly shown. The gate of Gluznee was blown open by a bag of powder hung to it by a nail; a barrel wheeled on a truck and simply placed on the pavement beside the prison wall has sufficed to crush and shatter everything that was exposed to the force of its explosion. All that is known at present is that yesterday, at about a quarter before four in the afternoon, some persons were seen to wheel a barrel into the thoroughfare called Corporation lane, one side of which for some distance is formed by the prison wall. According to one account a squib was stuck into the barrel, one of the men lighted it, and then the conspirators ran quickly up a court which leads out of the lane. In another moment the explosion followed. The wall heaved and shook, and then fell inwards with a single crash. Had Burke or Casey been taking exercise in the yard at the time, he might have had little cause to thank those who used so tremendous an instrument of rescue. But at this time the prisoners were within the prison itself, and as regards them the exploit of the conspirators has been without effect for good or evil. Not so with the unhappy inhabitants of the neighboring houses. Corporation lane is a commonplace street of small tenements, occupied by working people. The houses are neither new nor substantial; but if it were otherwise they could hardly have resisted the violence of the shock. As it is, the devastation has been beyond belief. The whole row opposite to the gap in the prison wall has been wrecked. The house immediately opposite was so completely crushed that there was no alternative but to pull down what remained of the tottering walls, and it is now only a heap of rubbish. On each side, the houses stand windowless and doorless, the cracked brickwork everywhere threatening the bystanders with a speedy collapse. A long way up the neighboring lanes and courts the glass is broken in the windows, the chimneys have been shaken down, the ceilings have been destroyed. In one case a wall seems to have been not only cracked, but forced out of the perpendicular by the violence of the shock. The perpetrators of this outrage did not miscalculate the potency of the weapon they used. This new gunpowder treason shows what power for mischief is in the hands of any determined ruffians whose fierce passions and seared consciences make them regardless of human life.

If the miscreants who have done this deed are capable of remorse, they may well be overcome by the thoughts of their day's work. Burke and Casey are still safe in confinement. Nothing that their friends can do is now likely to deliver them from the necessity of answering for their actions at the bar of justice. The conspirators have to no purpose committed a crime which will bring down on themselves and their scheme the execration of the world.

If one of them escapes, all that he will have to look back upon is the slaughter of a number of innocent people; the burning and mangling of women and helpless infants, the destruction of poor men's homes and poor men's property. Some forty persons are dead or wounded. We know not what number will have perished by the time these lines are read: but four or five were said to be dead last night, and others were in a most precarious state. It is, indeed, heart-rending to hear of little children four and five years old torn and mangled, to find youth and age involved in a common destruction. It is terrible to think that there are, no doubt, still among us others planning outrages equally dastardly and deadly, and that any day may bring some disastrous news. Our first thoughts, however, must be given to those who have been the victims of this plot. The chief sufferers are in the hospitals, and of course will receive all the care that their cases require. But the destruction of property has been large, and it is probable that several families have not only to mourn the loss or disablement of a member, but will be plunged into deep distress. They have a claim on the public, for they may be said to have suffered in a public cause. They are the victims of a conspiracy which, under the names of patriotism and liberty, has declared war on the government and society of these islands. In the Irish outbreak of last March, in the attack on the prison van at Manchester, in this traitorous enterprise at Clerkenwell, the Fenians have shown that they shrink not from bloodshed, even for a most inadequate end. Their object is now apparently to create a terror throughout the United Kingdom, and such is their unscrupulous ferocity that with a large class of the community they may so far succeed. If the country, however, can do nothing else, it can take care that those who actually suffer at the hands of these public enemies shall not want care in their sufferings and compensation for their losses.

As to the Fenian conspiracy itself, it must be evident that the time is past for clemency and forbearance. With traitors and assassins such as these there can be but one course. We desire to say nothing which may aggravate the bitterness of English feeling, or increase the indignation which will burst forth to-day in every part of the land. We feel that the Fenians have filled to the full the cup of wrath, and that in dealing with them public opinion will need rather to be restrained than instigated. We would impress on our readers the duty of looking at these events with as much calmness as is consistent with human nature, of remembering that not every Irishman--nay, not even every processionist and every listener to seditious speeches, is a Fenian. The conspiracy to which these Clerkenwell assassins belong is probably directed by a few, and its active co-operators may be only some thousands in the whole kingdom. This heaven might, indeed, if left to itself, soon leaven the whole lump; and it is therefore necessary to remove it at once. But, while doing strict and stern justice on the guilty, we may separate them in our minds from the excitable and deluded. Ireland has suffered much at the hands of her self-constituted representatives, and never more than when she is made to appear before the world as the mother of assassins. It may be that this great crime will cure many who have taken the infection of Fenianism. At least let England show that, whatever may have to be done, she will allow neither fear nor anger to sway the balance of justice.

ATROCIOUS FENIAN OUTRAGE.

Yesterday afternoon an attempt was made to obtain the release of the Fenian prisoners Burke and Casey by blowing up with gunpowder the outer wall of the House of Detention at Clerkenwell, in which they are at present confined while under remand, and it succeeded so far as to effect an enormous breach in the wall, about sixty feet wide at the top, and lessening towards the ground. Unhappily, that was not the whole result. Upwards of forty innocent people, men, women, and children of all ages, some of whom happened to be passing at the time, were injured more or less severely by this modern gunpowder plot, of whom one was killed on the spot, two have since died, and a fourth is not expected to survive the night. Thirty-six of the sufferers were removed to St. Bartholomew's Hospital, where three died in the course of the evening, and six to the Royal Free Hospital in Gray's-inn road. Three and four of the wounded were members of the same family, some were mere infants, and the husband of a woman who has since died of injuries she sustained lies in St. Bartholomew's shockingly bruised and prostrated. Others are missing. The living, on being taken to the hospital, received the prompt and humane attentions of Mr. Holden, one of the senior surgeons, Mr. Edward McClean, the house surgeon, and, indeed, of the whole medical staff. The treasurer (Mr. Foster White) was also conspicuous for the aid he rendered in promoting the comfort of the poor sufferers.

The explosion, which sounded like a discharge of artillery, occurred at exactly a quarter to 4 o'clock in the afternoon, when there is still daylight in even these short days, and was heard for miles round. In the immediate neighborhood it produced the greatest consternation, for it blew down houses and shattered the windows of others in all directions. The windows of the prison itself, of coarse glass more than a quarter of an inch thick, were to a large extent broken, and the side of the building immediately facing the outer wall in which the breach was made, and about one hundred and fifty feet from it, bears the marks of the bricks which were hurled against it by the explosion. The wall surrounding the prison is about twenty-five feet high, two feet three inches thick at the bottom, and about fourteen inches thick at the top.

The scene of the explosion is Corporation Row, which runs parallel with the prison wall on its northern side, and consisted of houses three stories high, some of them let out in tenements and others used for various manufacturing purposes. A very circumstantial account of the transaction is given by an intelligent little boy named John Abbott, thirteen years of age, who happened to be an eye-witness, and who now lies at St. Bartholomew's Hospital, but, happily, not much injured. The boy lived with his parents at 5 Corporation lane, and we cannot, perhaps, do better than give his statement in his own words:

About a quarter to 4 o'clock, he says, he was standing at Mr. Young's door, No. 5, when he saw a large barrel close to the wall of the prison, and a man leave the barrel and cross the road. Shortly afterwards the man returned with a long squib in each hand. One of these he gave to some boys who were playing in the street, and the other he thrust into the barrel. One of the boys was smoking, and he handed the man a light, which the man applied to the squib. The man staid a short time until he saw the squib begin to burn, and then he ran away. A policeman ran after him, and when the policeman arrived opposite No. 5 "the thing went off." The boy saw no more after that, as he himself was covered with bricks and mortar. The man, he says, was dressed something like a gentleman. He had on a brown overcoat and black hat, and had light hair and whiskers. He should know him again if he saw him. There was a white cloth over the barrel, which was black, and when the man returned with the squib he partly uncovered the barrel, but did not wholly remove the cloth. There were several men and women in the street at the time, and children playing. Three little boys were standing near the barrel all the time. Some of the people ran after the man who lighted the squib.

Mrs. Holder, a widow, living at 4 Corporation lane, and now in St. Bartholomew's, says, about half-past 3 a man knocked at her door, and, upon her son answering, the man asked to be allowed to go to the top story of the house to be enabled to see his cousin and speak to him when exercising in the yard of the house of detention. His application was refused, and he went away. About ten minutes afterwards the explosion occurred. It is understood that her son will be able to identify the man.

Two men and a woman are now in custody charged with being implicated in the crime. One of the men gives the name of Timothy Desmond, and describes himself as forty-six years of age, and a tailor by trade; the other, Jeremiah Allen, is thirty-six, and a bootmaker. The woman, whose name is Ann Justice, is about thirty years of age. Late last night she made a determined attempt to strangle herself in a cell in which she was confined in the house of detention, but it was frustrated. She has been in the frequent habit of visiting the prisoner Casey while he has been confined there.

It is understood that on Thursday evening Mr. Henry Pownall, the chairman of the county magistrates, in consequence of information he had received, paid a visit to the prison and directed the governor, Captain Codd, not to exercise the prisoners in the ordinary way yesterday, either as to time or place. The wall which has been blown down enclosed a large open space in which the prisoners were accustomed to take exercise. The governor, therefore, had them exercised between 9 and 10 yesterday morning, instead of the usual time, which was between 3 and half-past 4 in the afternoon, and to this precaution it is probably owing that the diabolical attempt of yesterday was unsuccessful. The governor is also understood to have put himself in communication with the police authorities, and they had undertaken to keep a large body of the force outside the walls, perambulating the immediate neighborhood of the prison. That, we believe, was not a special precaution, for it is said to have been observed during the time the man Groves was under remand on suspicion of being concerned in the murder of the bandsman. Six warders from the house of correction were sent to the prison on Thursday to act as a night guard, but the governor, not thinking they were necessary, dispensed with their services, and called in the aid of six or eight of his own warders as an additional force during the night. Shortly before the explosion the prisoner Burke appeared very excited, and went often to the window of his cell. Three men and a woman are said to have been concerned in the explosion. A policeman, who was on special duty in plain clothes at the time, rushed forward and tried to seize one of them, but was stunned for the moment by the force of the explosion and lost his feet. On rising he secured one of the men, and the woman was apprehended shortly afterwards. One of the three men who made his escape is supposed to have been the one who fired the train; but all these are matters to be elicited and explained in evidence.

In the course of yesterday a policeman on duty outside the prison had his suspicions so strongly aroused by seeing the woman Justice and a man frequently conversing together, that he communicated with one of the prison authorities, who in consequence made arrangements for giving an alarm if it should become necessary. During the day a warder on duty inside had his attention directed to a man at a window in the upper part of a house in Woodbridge street overlooking the prison yard. He went to bring another warder, and on their return the man had vanished, but was shortly afterwards seen talking to the woman Justice near the entrance to the prison, and to the man who had been seen loitering with her. The latter man wore a white apron, and had the appearance of a shoemaker; and that description applies exactly to one of the two now in custody. Later in the day the warder had his attention called to the same window in the opposite house in Woodbridge street, overlooking the prison yard, and there he saw a woman leaning out, and several men inside the room.

He distinctly counted five men, but there seemed to him to be more, and they were all looking anxiously in the direction of the place where the explosion occurred almost immediately afterwards.

All the houses in Corporation lane overlooking the prison yard are more or less damaged by the concussion, and two or three of them so seriously in front of the part of the wall where the breach was made that members of the fire brigade, under the direction of Captain Shaw, were pulling them down last night in anticipation of their falling by their own weight. About 500 of the metropolitan police were on duty keeping off the crowd and preserving order, and 100 of the Fusileer Guards, under the command of Colonel Moncrief, Captain Gosling, Lieutenant Moray, and Lieutenant Inigo-Jones, were posted as a guard inside the prison throughout the night. Many of the county magistrates were also in attendance, including Mr. Pownall, the chairman; Lord Ranelagh, Mr. Northall-Laurie, Mr. Henry White, Mr. Bodkin, Mr. Fish-Pownall, and Mr. Frederick Pownall, the county surveyor. The police on duty were under the command of Captain Labalmondiere, from their headquarters in Scotland yard. Throughout the whole evening great excitement prevailed in the neighborhood. The two men and the woman who have been apprehended were, until late last night, kept in the House of Detention, as being the nearest to the place where they were arrested, but not being in the legal custody of the governor, preparations were being made for their removal to another prison.

The occasion served to bring into strong light the incalculable value of such an institution as St. Bartholomew's hospital on a great public calamity. The poor sufferers, many of them rendered homeless for the time, were conveyed thither with as little delay as possible, and many anxious relatives crowded its doors during the evening to hear some tidings respecting them. According to Mr. Holden, the senior surgeon on duty, the effect of the concussion in most cases had been to produce a severe shock to the nervous system and great prostration. The chief injuries were about the head, including severe wounds, with fractured bones of the face in several instances. The hands of a boy about 11 years old were so frightfully wounded that all his fingers except two, and both his thumbs had to be removed. A woman, who had sustained a severe fracture, was to all appearance on the point of death on her admission, but she rallied a little afterwards, and later in the evening her condition inspired hope. A girl named Anne Cross, eight years old, had her left knee fearfully lacerated. She was on her way home with a jug of milk for which her mother had sent her when she was injured by the explosion.

In the course of the evening Mr. Foster White, the treasurer of St. Bartholomew's forwarded a telegram to the Prince of Wales, the president of the hospital, informing his Royal Highness of the preparations which had been made there for the reception and treatment of the sufferers.

The dead at St. Bartholomew's hospital are William Clutton, a woman named Hutchinson, (whose husband, 38, is in a very precarious state,) and a female child named Abbott, about eight years old. Her mother, Maria Abbott, is also a patient.

The following are the in-patients: John Abbott, 13, No. 5 Corporation lane: two children, Charles and Martha Perry, 4 and 5 years respectively; Caleb Beckett, 28; John Harvey, 48; William Abbott, 11; William Kitchener, 55; John Walker and Thomas Wheeler; Thomas Hutchinson, 38; Ann Cross, 8; Maria Giles, 39; Margaret Mosely; Sarah Hartley, 41; Thomas Hartley, 8; and two other boys named Hartley, all of the same family: Harriet Thompson; a baby (unclaimed); Elizabeth Williams, Elizabeth Holder, 56; Elizabeth Hodgkinson, Maria Abbott, and a child not known; Elizabeth Thompson, Mary Ann Chittelbird, Anna Maria Abbott, another Elizabeth Thompson, 48; Mary Ann Miles, (old,) Martha Evans, 67; Ann Bennett, 67; and Mary Ann Young.

At the Free hospital, Gray's inn lane, are—Anna Maria Thompson, 4; Anna Roberts, 39; Arthur Abbott, 4, and Minnie Abbott, 4; Humphrey Evans, 66; and a boy two years and a half old, calling himself Tommy. One of the six was not expected to live.

Mr. Seward to Mr. Adams.

No. 2108.]

DEPARTMENT OF STATE,

Washington, December 14, 1867.

SIR: Your despatch of the 29th of November, No. 1485, has been received. I thank you for your attention in furnishing me copies of the British statutes on treason-felony. When I shall have received expected copies of the indictments of citizens of the United States who have been tried, and are to be tried under these statutes, I shall have occasion to give you at large the President's views concerning the conflict which exists between the United States and Great Britain in regard to the just rights of naturalized citizens under prosecution for offences committed in Great Britain.

I have read the letter which Colonel Nagle addressed to you on the 22^d November, and which you have transmitted at his request. I have been advised by the consul at Dublin that Colonel Nagle, subsequently to writing that letter, applied to the court, in the customary form of law, for an immediate trial, or for his discharge from imprisonment; that the court denied the application, and that the trial stands postponed, to take place at Sligo, in March next. You will take care that he be defended by proper counsel, at the expense of the United States.

Her Majesty's government determines for itself upon the policy of vigorous criminal prosecution in these frequent cases, which I have had more than one occasion to say are popularly regarded in the United States as incidents of popular movements for political reform. It would be unbecoming on my part to speculate upon the effects which this policy secures in Great Britain. Charged, however, as I am with the duty of extending legal protection under treaties and the law of nations to the citizens of the United States sojourning abroad, and with the duty also of preserving good and favorable relations between the United States and foreign countries, I have constantly thought it right to let her Majesty's government know, in every proper way, that the practice of exceptionable severity in these cases produces in the United States consequences very unfavorable to the interests of Great Britain. It was with a very clear foresight of these results that, under the President's direction, I so earnestly and so frequently urged the discharge of Colonels Nagle and Warren before their prosecution, upon a full understanding with the lamented Sir Frederick Bruce of his approval and concurrence in that proceeding. Similar motives induced the President to recommend clemency to the United States citizens recently convicted at Manchester. If I may judge from the tone of popular and legislative sentiments in the United States, the policy of these recommendations has been fully vindicated. It is my deliberate conviction that, so far as our own country is concerned, it would be an act of wisdom on the part of the British government to dismiss its prosecution against Colonel Nagle, and to discharge Colonel Warren and the prisoner Costello from penal imprisonment.

You will please communicate the substance of this despatch to Lord Stanley, and give him a copy thereof if he shall request it.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1500.]

LEGATION OF THE UNITED STATES,

London, December 21, 1867

SIR: In connection with your despatch No. 2105, of the 2^d instant, I have the honor to report the receipt from Mr. West of an official copy of the report of Colonel Warren's trial, obtained by him, under my directions, from the authorities in Ireland.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

HON. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Note by the Department of State.

The following report having been published in pamphlet form, and it being advisable for future reference to preserve intact the paging of the same, the

words "Page of report No. 1," "Page of report No. 2," &c., &c., will be understood to correspond with pages 1, 2, &c., &c., of the original report :

REPORT OF THE TRIAL OF JOHN WARREN FOR TREASON-FELONY, AT THE COUNTY DUBLIN COMMISSION, HELD AT THE COURT-HOUSE, GREEN STREET, DUBLIN, COMMENCING THE 30TH OCTOBER, 1867.—REPORTED FOR THE CROWN, BY WILLIAM G. CHAMNEY, ESQ., BARRISTER-AT-LAW.

Presiding judges.—The right honorable the Lord Chief Baron Pigot; the right honorable Mr. Justice Keogh.

Sheriffs.—High sheriff, Malachi Strong Hussey, esq., J. P.; sub-sheriff, William Ormsby, esq.

Counsel for the Crown.—The right honorable Robert Richard Warren, M. P., her Majesty's attorney general; Michael Harrison, esq., her Majesty's solicitor general; Charles Robert Barry, esq., M. P., sergeant-at-law; Robert Longfield, esq., Q. C., law adviser; James Murphy, esq., Q. C.; Edward Beytagh, esq.

Crown solicitor.—Matthew Anderson, esq.

Clerk of the Crown.—Edward Geale, esq.

*Counsel for the prisoner.**—Denis Caulfield Heron, esq., Q. C.; Richard Dowse, esq., Q. C.; Constantine Molloy, esq.

Attorney for the prisoner.—John Talbot Scallan, esq.

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OCTOBER 31, 1867.—Witnesses: Daniel J. Buckley examined; recalled and examined by the chief baron; Michael Gallagher, the Teelan pilot, Killybegs, examined; examined by the chief baron; recalled; James Nolan, otherwise Daniel Coffey, a prisoner, examined; John Haughey, Killybegs, examined; Daniel Jones, Sligo, examined; examined by the chief baron; Joseph Clarke, coast guard, Streedra, Sligo, examined; examined by the chief baron; recalled; Bernard Burke, coast guard, Streedra, examined; recalled; Patrick Browne, Dungarvan fisherman, examined; Daniel Collins, Dungarvan fisherman, examined; George Jones, coast guard, Helvick, examined; Andrew Roche, of Ring, Dungarvan, examined; examined by the chief baron; Constable James Norris, Youghal, examined.

NOVEMBER 1, 1867.—Witnesses: Head Constable James Patten, Killybegs, examined; Sub-Constable Thomas Irwin, Dungarvan; John Joseph Corydon, informer, examined; cross-examined by the prisoner; Sergeant Francis Sheridan, Dublin police, examined—The Crown case closed—The prisoner's statement—The solicitor-general's reply—The chief baron's charge—Verdict.

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COUNTY DUBLIN COMMISSION.—OCTOBER, 1867.

Queen vs. John Warren.

WEDNESDAY, October 30.

The lord chief baron and Mr. Justice Keogh took their seats on the bench shortly after 10 o'clock a. m., in the court-house, Green street.

Prosecution for treason-felony.

JOHN WARREN was placed at the bar.

Mr. HERON. May it please your lordships, I appear here on behalf of the prisoners W. J. Nagle and John Warren only; and on their behalf my respectful application to the court would be that those prisoners be both now arraigned. The reason is that an application will be made on behalf of Nagle, who is an American citizen; of course you can see at once what

* Counsel and attorney for the prisoner withdrew during the progress of the case.

that application will be. He is anxious that his trial should not be delayed beyond this commission.

The ATTORNEY GENERAL. I do not see how the purposes of justice, as regards Warren, can be affected one way or the other by calling on Nagle to plead now, and I must, therefore, decline to accede to the application.

Mr. HERON. I don't do it for the purpose of pleading. My request is that Nagle may be now arraigned, in order that an application may be made to your lordships with reference to his trial during the present commission.

The ATTORNEY GENERAL. It will be quite time enough to do that when he is called upon to plead.

Mr. HERON. I really cannot see why this should be refused. Nagle would have been arraigned on Saturday, only I informed your lordships that a question would arise on the arraignment. I thought they were to be arraigned together.

The ATTORNEY GENERAL. I never said that the two prisoners would be arraigned together. When the present prisoner, Warren, has pleaded, I must be allowed to take my own course as to whom I will arraign next.

The CHIEF BARON. If you have any application to make on the part of any prisoner against whom a bill of indictment has been found, there is nothing to prevent your making it.

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Mr. HERON. My application on behalf of Nagle cannot be legally made until he has pleaded, and that is the reason I ask him to be arraigned. If he is arraigned now, he will plead "not guilty" without any delay.

The CHIEF BARON. Do you see any reason, Mr. Attorney General, for not arraigning him now?

The ATTORNEY GENERAL. I see no objection to it, my lord, except that it will delay the proceedings.

The CHIEF BARON. It cannot affect the proceeding against Warren; for, supposing we arraign Nagle now, of course we are not called upon to proceed with his trial.

The ATTORNEY GENERAL. I am aware of that, my lord; but putting forward Nagle now would cause considerable delay to the present trial.

The CHIEF BARON. If questions are likely to arise on the arraignment of Nagle that would involve delay, that would be a good reason for not arraigning him now; but if not, I see no reason why we should not accede to the application.

The ATTORNEY GENERAL. My lord, I respectfully say we are not bound, on behalf of the Crown, to put forward any prisoner except the prisoner with whose trial we, acting for the Crown, think it desirable to proceed.

The CHIEF BARON. I think you are not called upon to proceed with the trial of any prisoner, Mr. Attorney, except the prisoner whom you deem it desirable should be tried.

The ATTORNEY GENERAL. Nor to put forward any prisoner, unless we think it desirable on behalf of the Crown to do so.

The CHIEF BARON. I think there should be no objection to arraigning the other prisoner now.

The ATTORNEY GENERAL. If your lordships rule that you have the right so to direct, of course I must submit; but on behalf of the Crown I respectfully object to your doing so.

The CHIEF BARON. We will proceed with the arraignment of the prisoner now before us.

Mr. HERON. Then, my lords, on behalf of that prisoner, I respectfully ask to see the indictment, in order that I may see the list of witnesses indorsed on the back of it, before he pleads.

The ATTORNEY GENERAL. The prisoner has already got a copy of the indictment.

Mr. HERON. But I want to see the original.

The ATTORNEY GENERAL. I submit that all he is entitled to is a copy of the document.

Mr. HERON. My lords, there is express authority in support of my application. I quote from 3 Cox's Criminal Cases, page 517, which says that "a prisoner indicted for felony is not entitled to a copy of the names and addresses of the witnesses appearing on the back of the indictment, but he will be allowed to inspect the indictment for the purpose of seeing the names of such witnesses." That has always been the law in England.

The indictment was then handed to Mr. Heron.

Mr. HERON. My lord, we put in a plea in abatement, which will be verified by the prisoner's affidavit.

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The usual affidavit in support of the plea was then sworn by the prisoner.

Mr. Heron read the plea in abatement as follows:

"And the said John Warren, in his own proper person, cometh into court here, and having heard the said indictment read, saith that it does not appear by any entry, statement, or indorsement upon the back of the said indictment, or upon any part thereof, that the witnesses whose names are indorsed upon the back of the said indictment by the clerk of the Crown, pursuant to the statute in such case made and provided, were, or that any of the said witnesses was sworn or affirmed by the said Alexander Ferrier, foreman, or any other member of the said grand jury, previous to this on his examination, or at all before the said

grand jury, as appears by the record of the said indictment; and the said John Warren further saith that the said Alexander Ferrier, foreman, has not, nor has any other member of the said grand jury, stated and authenticated the same by his signature or initials upon the back of the said indictment, or upon any other part thereof, that any of the said witnesses, upon whose testimony the said bill of indictment was found and returned a true bill by the said jurors, was sworn or affirmed previous to such witness or witnesses having been examined, or giving his or their evidence before the said jurors; and the said John Warren further saith that it does not appear by the record of the said indictment, or otherwise, that the said bill of indictment was found and returned a true bill by the said jurors, upon the evidence of any witness or witnesses who were sworn or affirmed by said foreman, or any member of the said grand jury. And this he, the said John Warren, is ready to verify; whereupon he prays judgment, and that the said indictment may be quashed."

Mr. HERON. My lords, the point of this plea in abatement is founded on the act 1st and 2d Victoria, cap. 37, sec. 1.

The attorney general demurred as follows:

"And thereupon the Right Hon. Robert R. Warren, attorney general for our said lady the Queen, who now prosecutes here for her Majesty, in this behalf saith that the said plea, above pleaded by the said John Warren, and the matters therein contained, in manner and form, as the same are above pleaded and set forth, are not sufficient in law to prevent the said John Warren from being now compelled to answer the said indictment; and the said Robert R. Warren, for our lady the Queen, prays judgment, and that the said John Warren may be compelled now to answer the said indictment."

Mr. HERON. We join in demurrer for the prisoner. This is our joinder in demurrer:

"And thereupon the said John Warren saith that the said plea above pleaded by him, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to prevent the said John Warren from being now compelled to answer the said indictment, and are sufficient in law to preclude our said lady the Queen from prosecuting the said indictment against him, the said John Warren, and the said John Warren is ready to verify and prove the same, as the said court here shall direct and award."

The ATTORNEY GENERAL. I respectfully submit that demurrer must be allowed. The

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plea which the prisoner has put into the indictment avers that it does not appear upon the back of the indictment that certain witnesses were sworn, and that it does not appear that Mr. Alexander Ferrier, the foreman, or any other member of the grand jury, by his signature or initials upon the back of the bill authenticated the swearing of the witnesses by whom this bill was found. This plea is stated to be founded upon the statute 1st and 2d Victoria, cap. 37, sec. 1, by which act of Parliament the former law under which witnesses were sworn in open court was repealed, as was decided in the case of the Queen *vs.* O'Connell, and in lieu of that mode of swearing witnesses, it provided that the foreman or other member of the grand jury should have the power of administering an oath, and it then proceeds to say: "The foreman or other member of the grand jury who shall have administered such oath shall, upon the back of the bill, state the names of the witnesses, and authenticate the same by his signature or initials." Now the matter of fact which is admitted by our demurrer is that in the present case the foreman has not authenticated the swearing of the witnesses by his name or signature. We say that is not sufficient ground for a plea in abatement. In the case of the Queen *vs.* O'Connell and others a similar plea was put in by one of the prisoners, Thomas Steele. (See 11th Clark and Fennelly's Reports, page 252.) I shall read to your lordships what Chief Justice Tyndal says, in his judgment given in the House of Lords on this question, in that case. He says:

"As to the ninth question, the errors in fact assigned in the writs of error *coram nobis* by each of the defendants—except Thomas Steele—were the same, viz: That the bill of indictment was found and returned a true bill by the grand jury upon the evidence of divers witnesses, whose names are enumerated, and of no other persons; and that these witnesses, previous to their examination before the grand jury, were not sworn in the Court of Queen's Bench, as required by the 56 Geo. III, c. 37, now lawfully bound by affirmation or declaration, to give true evidence before the said grand jury. In the case of the writ of error *coram nobis*, brought by the defendant Thomas Steele, the error assigned was this: That the indictment was not found in the manner required by the statute 1 and 2 Vic., c. 37, inasmuch as that, in stating on the back of the said bill of indictment the names of the witnesses who had been sworn, &c., neither the foreman nor any other member of the grand jury did authenticate by his signature or initials, as is required by the statute, that the said witnesses, or any of them, had been sworn, or made affirmation or declaration; nor that no other witnesses, save those named in the assignment of errors, were so sworn or affirmed or examined before them. My lords, with respect to the assignment of errors in fact, grounded on the non-compliance with the statute 56 Geo. III, the answer appears to me to be, that the subsequent statute 1 and 2 Vic., c. 37, operates as a virtual repeal of the former as well in the Court of Queen's Bench as in other courts of criminal jurisdiction in Ireland, &c."

Now, my lords, in this plea in abatement it is not alleged that in point of fact the witnesses were not sworn; the only fact put in issue by this plea is the fact of the non-authentication by the foreman or other member of the grand jury of the swearing of the witnesses;

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and that is the very point which has been solemnly decided in the case of the Queen *vs.* O'Connell to be insufficient ground for a plea in abatement. I submit, therefore, that this plea is bad, and that the demurrer must be allowed.

Mr. HERON. I have only to say, my lords, that the act of Parliament which has been read by me, and referred to by the attorney general, appears express upon the subject. Formerly the witnesses were sworn in open court. It now must appear in some way that the witnesses were sworn before the grand jury, and that the grand jury found the bill of indictment upon sworn testimony, and I say that on the face of the record here that does not appear. Therefore, following the conciseness of the attorney general, I say the demurrer ought to be overruled.

Mr. DOWSE. I desire to add one word to what has been said by my learned friend. We have but this matter upon the record of the proceedings, and that will answer our purpose. I do not intend at present to address any observations to your lordships in support of our plea further than to say that I think this case is distinguishable from the case cited by the attorney general, and in particular, that the plea put in this case was not the same as in the case of the Queen *vs.* O'Connell.

The CHIEF BARON. The case of the Queen *vs.* O'Connell appears to us to be a direct authority upon the question; we shall, therefore, allow the demurrer.

Mr. HERON. As I did not state fully my reasons, would your lordships permit me to renew my application on behalf of the prisoner Nagle? I may tell the attorney general that the prisoner is an American citizen, born in the United States, and it is his intention to apply for a *venire de mediatate lingue*. The proper way to do so is, when the prisoner is called upon to plead; on pleading "not guilty" he applies for the *venire de mediatate lingue*, which the court then awards or not, as it sees fit. Mr. Dowse and I are only concerned for those two prisoners—Warren and Nagle. I put this partly on a ground personal to ourselves, for if the case he tried during term we shall be put to very serious inconvenience. I therefore humbly apply to your lordships, and would also respectfully appeal to the attorney general, that this preliminary may be disposed of. If your lordships see fit to grant the *venire*, of course it will take some time before the sheriff can execute it, and thus the case might run into the term, and by having the prisoner arraigned now the *venire* might be issued at once—a matter which I think would be more convenient to the court and to the crown counsel, and certainly would be a great convenience to the counsel for the prisoners.

The ATTORNEY GENERAL. I am under the impression the proper time to apply for the *venire de mediatate lingue* is when the jury is called to try the prisoner, not when he pleads.

Mr. HERON. No. The proper time is when the prisoner has pleaded. I may refer the attorney general to the case—I am sure he knows it, but I may recall it to his recollection—of the Queen *vs.* Maria Manning, reported in 1st Denison's Crown Cases. I am also prepared

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with other authorities which establish the point, that the proper time is when the prisoner pleads not guilty.

Mr. Justice KEOGH. There was no jury *de mediatate lingue* in the case of Mrs. Manning.

Mr. HERON. No, my lord; it was decided in that case that the prisoner was not entitled to a mixed jury, because she was the wife of an Englishman; but it was decided that the proper time to make the application was when the prisoner pleads.

Mr. Justice KEOGH. That was the course adopted in the case of the Queen *vs.* McCafferty, tried in Cork.

Mr. HERON. Yes. In fact the prisoner lapses his time if on pleading he does not inform the court that he is an alien and ask for a mixed jury.

The ATTORNEY GENERAL. He lapses his time if he allows the jury to be called without making the application.

Mr. HERON. No; he lapses his time if he does not make it when he pleads.

Mr. Justice KEOGH. In McCafferty's case the application for the *venire* was after the prisoner pleaded, but there was no application that the prisoner should be arraigned.

Mr. HERON. I am doing it on the ground of convenience.

The ATTORNEY GENERAL. I will endeavor to accommodate my learned friends as far as I can, and as soon as this case of Warren's is over, I will have Nagle next arraigned.

Mr. HERON. Very well, that will do.

The CHIEF BARON. Proceed now to arraign the prisoner.

The CLERK OF THE CROWN. John Warren, you stand indicted, that you, on the 1st day of March, 1867, and on divers other days as well before as after that day, feloniously and wickedly did compass and intend to deprive and depose our lady, the Queen, from the style, honor, and royal name of the imperial Crown of the United Kingdom of Great Britain and Ireland, and the said felonious compassing and intention feloniously and wickedly did express, utter, and declare by divers overt acts and deeds charged and stated in the indictment. And in a second count you are indicted that you feloniously and wickedly did compass and intend to levy war against the Queen within that part of the United Kingdom called Ireland, in order by force and constraint to compel her to change her measures and counsels, and the said felonious compassing and intention feloniously and wickedly did express, utter and declare by divers overt acts and deeds the same as in the first count mentioned. Are you guilty or not?

PRISONER. Not guilty.

Mr. HERON. May it please your lordships, on behalf of the prisoner we beg to hand in the following suggestion :

"And thereupon the said John Warren says, that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been such citizen of the said United States of America from the first day of October, in the year of our Lord one thousand eight hundred and sixty-six, and still is a citizen of the said United States of America; and he says by reason of the premises he is an alien; and he prays the writ of our

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said lady the Queen to cause to come here twelve good and lawful men of said county by whom the truth of the matter may be better known, and who are of no affinity to the said John Warren, to recognize upon their oaths, and inquire whether the said John Warren be guilty of the felonies in the said indictment above specified, or either or any of them, or not guilty, and so forth, whereof one-half to be natives, and the other half to be of aliens; to wit, born in the said United States of America, under the allegiance of the said United States of America, to try the issue of said plea."

The ATTORNEY GENERAL. I respectfully submit, my lords, that this suggestion ought not to be received.

Mr. HERON. Why not?

The ATTORNEY GENERAL. It is not a suggestion that the prisoner is an alien.

Mr. HERON. But why not receive a suggestion which I, on behalf of the prisoner, tender to the court?

The ATTORNEY GENERAL. It does not follow that every document a prisoner chooses to put in is to be placed on the record. There is no authority for receiving such a suggestion.

Mr. HERON. If the suggestion be an illegal one there is a course open to the attorney general, and he can so deal with it. If it be untrue in point of fact, there is also a course open to him. To every document of the kind put in on behalf of the prisoner the Crown have only one of two courses to adopt, either to demur or take issue in fact; but I entirely dissent from the novel doctrine—never listened to except in this court—that a pleading handed in by counsel on behalf of a prisoner is not to be received. Such a thing was never done in England in the whole course of the state trials.

The CHIEF BARON. I understand this question arose also in the course of the proceedings in Cork.

The ATTORNEY GENERAL. In that case, the Queen *vs.* McCafferty, it was admitted by the crown that the prisoner was an alien; but where the fact is not admitted by the Crown there must be some evidence given before the suggestion can be received. I submit that this suggestion cannot be received till the prisoner gives some *prima facie* evidence of the allegation on which the suggestion is based.

Mr. Justice KEOGH. Mr. Heron, do you ask us to receive the suggestion without giving us any evidence that the prisoner is an alien?

Mr. HERON. No, my lord; I ask you to receive the suggestion, and let the Crown either take issue or demur to it. If they take issue, then will be the time to give evidence.

The CHIEF BARON. The ground on which you call upon us to receive the suggestion is contained in the 37th section of the jury act.

Mr. HERON. I don't found my application on the 37th section, my lord.

The CHIEF BARON. On what other ground do you make it?

Mr. HERON. At present my application is that this suggestion be received. I found that

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application on the ordinary rules of courts of justice, never departed from in England, that any pleading handed in by counsel on behalf of a prisoner is received and dealt with according to law.

The CHIEF BARON. But we have first to determine is this a pleading.

Mr. HERON. It is a suggestion.

The CHIEF BARON. Is it a pleading?

Mr. HERON. It is, in this way: supposing it were untrue, the only way to deal with it would be to take issue upon it and then go into evidence, after which the court could decide upon the matter. In the case to which Mr. Justice Keogh has just referred—the Queen *vs.* McCafferty—no formal suggestion was handed in; the prisoner stated he was an alien, and the court thereupon directed the venire to issue. But the proper and regular course, as appears by the case of the Queen *vs.* Manning, is this: that a suggestion is put in by the prisoner, and the Crown deals with that suggestion. In the case of Manning it was refused, which is the strongest point in my favor, for the course adopted was not that of refusing to receive the suggestion; the suggestion was received and made part of the record. The attorney general took issue upon it, and it was decided by the fifteen judges afterwards that the prisoner had no right to the venire, because she was the wife of a British subject. But it was never contended by the attorney general that the suggestion which the prisoner handed in ought not to be received.

The CHIEF BARON. If the suggestion states what is entirely impertinent matter the court ought not to receive it. The purpose of this suggestion is, to claim a *venire de medietate*

lingua—in other words, to claim a jury composed half of aliens. In order to show that that application is one that ought to be entertained, it is necessary to show that the prisoner is an alien, and there is no allegation in this document that he is an alien. If he is not an alien, he is not entitled in point of law to the privilege he seeks, and if that is not stated to us in a document which is presented to us for the purpose of inducing us to determine that he is entitled to that privilege, I question whether we can deal with it as a document properly receivable by the court.

Mr. HERON. My lord, I propose to try legally, in the only way I can upon the record, whether a citizen of the United States of America is not entitled to a jury *de mediatate lingua* here in Ireland. The only way I can do that, in my humble judgment, is by placing that suggestion upon the record, in order that in case this court refuses the application there may be a power on behalf of the prisoner to appeal from this court to a superior tribunal. That cannot be done if the court decline to receive the document, which is not an offensive document; which is prepared properly according to the rules of the court; which may state what is contrary to law or what is according to law, but which, at all events, is, in point of form, a proper document properly prepared. My lord, according to the ancient practice, as appears by the reports of the state trials, no such question as this of not receiving such a document could arise, for the old practice was to file it in the office, and an office

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copy was furnished to the parties and brought into court for the trial, and there is no instance of any application having ever been made to have such a document taken off the files of the court, unless it contained some improper or offensive matter. I, on behalf of my client, claim the privilege to have the case tried by a jury *de mediatate lingua*, and for that purpose I ask to have that document received, and I ask the attorney general to cite any case in the whole course of the state trials in England, even in the worst times, where a document handed in by prisoner's counsel was not received.

Mr. DOWSE. My lords, I shall shortly state the view which we, on behalf of the prisoner, take of this suggestion which we have handed in. We respectfully say that we have stated on the face of that suggestion that the prisoner is an alien. We are willing now, for the purpose of argument, to concede that he is not entitled to the jury *de mediatate lingua* unless he is an alien. What that jury *de mediatate lingua* may be will be afterwards matter for consideration if the *venire* is granted. We admit that the prisoner is not entitled to it unless he is an alien. We say he is an alien, and that we have so stated upon this suggestion, although we have not used the word "alien" in the document. We want to raise this point: that a citizen of the United States of America cannot be a subject of the Queen of Great Britain. If the Crown now put in another suggestion, stating additional facts, we are ready to deal with it. We say the prisoner is a citizen of the United States, owing allegiance to the United States, and we say that this is in substance the same thing as stating that he is an alien, only in more extended terms. We say he is a subject of the United States of America, and that in law that means an alien. This matter is not brought before the court for the purpose of making mere technical points and afterwards abandoning them. We wish to have the question solemnly argued and adjudicated upon, and with that object we now apply to your lordships to receive the suggestion. The Crown can then deal with it as they deem right. They may take issue on it; they may demur to it, or they may plead matter which may require a demurrer from us. Our present application is to your lordships to receive the suggestion and place it on the files of the court, so that the question which we seek to raise by it may be decided one way or the other.

The CHIEF BARON. What you mean to contend is, that being a citizen of the United States makes him an alien?

Mr. DOWSE. Yes; that a man cannot be the subject of a republic and a monarchy at the same time.

The CHIEF BARON. If that be the object of the suggestion, I fail to see any objection to that being stated on the face of the document. There is nothing to prevent your stating on the face of the document that he is an alien by reason of being a citizen of the United States of America.

Mr. DOWSE. Very well, my lord, we will do that.

The suggestion was then handed to counsel, who altered it as pointed out by his lordship.

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Mr. HERON. I will now read for your lordship the passage as altered:

"And thereupon the said John Warren says that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been a citizen of the said United States of America from the 1st day of October, 1866, and that he still is a citizen of the United States of America, and he says by reason of the premises that he is an alien."

The ATTORNEY GENERAL. I think the document as it now stands is even more objectionable than before. I apprehend, notwithstanding my learned friend's reference to the state trials, that he will find no case in which a suggestion was received by the court unless, in the first place, there was proof of the matters of fact stated in the suggestion; and, in the second place, the court must be satisfied that it is a material suggestion. I admit that

the suggestion would be material if it averred, as a matter of fact, that the prisoner was an alien; but it contains no such averment as a matter of fact. There is, instead of that, an argumentative averment, which, if we were dealing with it in another court, might be the subject of a demurrer, namely, that by being a citizen of the United States he is, in point of law, an alien. In every case that I have read, in which a prisoner applied for a jury *de mediatate lingue*, it was on the averment that he was born out of the jurisdiction. Here there is no such averment.

The CHIEF BARON. A man may be born out of the jurisdiction and still not be an alien.

The ATTORNEY GENERAL. Quite so, my lord; but being born out of the jurisdiction is a necessary element to constitute a man an alien.

The CHIEF BARON. Mr. Heron, have you any authority as to the form of raising a question of this kind on the record?

Mr. HERON. No, my lord; I can only point to the invariable practice of the courts in England to receive any pleadings which the prisoner's counsel hands in.

Mr. Justice KEOGH. What is the practice as regards the granting of juries *de mediatate lingue*? There surely must be some settled practice on the point. Is there any instance in which a jury *de mediatate lingue* has been granted except on the suggestion that the prisoner was an alien?

The ATTORNEY GENERAL. No, my lord.

Mr. Justice KEOGH. Is there any instance of a suggestion being entered argumentatively averring that a prisoner was an alien?

The ATTORNEY GENERAL. None, my lord.

Mr. DOWSE. It is very easy to say "none," but how do you know that there is no such case?

The SOLICITOR GENERAL. I have never met with such a case. In every case I have seen, and in the form given in all the books, the statement is: "that the prisoner is an alien born, that is to say, that he was born in the county of —, of an alien father and an alien mother." I respectfully contend that this suggestion is illegal.

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Mr. HERON. I decline to argue the legality of the suggestion till I know whether it is on the record or not.

The CHIEF BARON. With respect to the matter of fact alleged in the suggestion, what do you say, Mr. Attorney? Supposing we were disposed to receive the suggestion, if we considered the facts alleged in it *bona fide*?

The ATTORNEY GENERAL. We don't know how the fact is at all, my lord. Of course the prisoner is bound to give evidence as to the truth of the allegations contained in the suggestion.

Mr. HERON. I cannot go into evidence till I know whether the document is received or not.

The CHIEF BARON. This is matter to be determined by precedent, and we must follow what has been done in courts of justice before on similar occasions. We cannot award a *venire de mediatate lingue* upon the mere allegation in a document that the prisoner is an alien. We cannot treat the statement as made *bona fide*, unless there be some evidence of his being an alien, or at least a statement showing distinctly how he is an alien, to which statement evidence may be applied. If the claim be made in the form of a suggestion, we must be careful that it be so framed, that if it be met by a demurrer, there shall be no doubt as to what is to be treated as admitted on the record. It must be so worded as to be free from ambiguity. I would therefore suggest that you should add at the end of the sentence, "and he says by reason of the premises that he is an alien," the words, "and not otherwise."

Mr. HERON. Very well, my lord. I will do so.

The CHIEF BARON. If those words were not added, the prisoner might, if there was an appeal on demurrer, fall back on the suggestion of alienage.

Mr. HERON. I have now altered the document in the way your lordship suggests: "And he says that by reason of the premises, and not otherwise, that he is an alien."

Mr. Justice KEOGH. Does that make it unequivocal?

Mr. HERON. I think so, my lord.

The ATTORNEY GENERAL. I think it ought to state where he was born. Will you admit that the prisoner was born in this country, and afterwards became a citizen of the United States of America?

Mr. HERON. Wait till we hear what is to be done with the suggestion. Is the document to be received or not?

The CHIEF BARON. It is absolutely necessary that the facts shall be stated clearly on this document, otherwise we must decline to receive it. If, for instance, it should appear on the evidence that the prisoner was born in this country, or that he was born in America of persons who were British subjects, we might require before receiving this suggestion to have the facts set forth exactly on the face of the document. You cannot evade, or rather you cannot avoid (I will not say evade) the real question. If you desire to have this question entered on the record, you cannot avoid presenting it in such a manner as to raise the question in the mode most fair to the Crown and consistent with the facts in the case.

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Mr. HERON. My lord, everything alleged in court is to be proved, and ultimately found by the court *secundum allegata et probata*. If anything has been suggested contrary to law, there is an easy remedy for that; if anything contrary to fact, there is an easy remedy for that, too. I have alleged my facts upon the face of the document, but till I know the issue which I have to prove I must decline to go into evidence.

The CHIEF BARON. We cannot receive this document without evidence, acting on the authority of the Queen *v.* McCafferty.

Mr. HERON. There was no suggestion entered in the case of the Queen *v.* McCafferty.

The ATTORNEY GENERAL. Pardon me. I have the report of the case here, and it distinctly states that a suggestion was entered, evidence having previously been given on the question of alienage.

The CHIEF BARON. We ought to be satisfied by evidence that the suggestion is *bona fide*, and founded on fact, before we proceed.

Mr. DOWSE. Before we go into that, I understood your lordship to make a suggestion on another point, as to whether this document requires any further amendment.

Mr. Justice KEOGH. Yes.

Mr. DOWSE. I submit it does not, and that it is perfectly unequivocal. Your lordships will please bear in mind what the document states:

"And thereupon the said John Warren says that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been a citizen of the said United States of America from the 1st day of October, 1866, and still is a citizen of the said United States of America, and he says that by reason of the premises, and not otherwise, he is an alien."

I think, my lord, that is perfectly unequivocal.

Mr. Justice KEOGH. You want to raise the question that a British subject can adopt the American allegiance?

Mr. DOWSE. That is not the question exactly, my lord, though it may be involved in it.

Mr. Justice KEOGH. Surely that is the real question you wish to bring before the court: if not, that document is equivocal.

Mr. DOWSE. It is not equivocal. The statute gives to aliens the privilege of having a jury *de medietate lingue*. I admit that we are in the habit of understanding by the word "alien" a person born out of the jurisdiction. We wish to say that the prisoner is an alien by virtue of being a citizen of the United States.

The CHIEF BARON. Have you any objection to state on the suggestion that the prisoner was born within the Queen's dominions? We must take care that there shall be nothing in the frame of the document that shall avoid that question.

Mr. DOWSE. Perhaps it would not be right to ask your lordship the question, but as we are in the way of amendment, I wish to know would the suggestion be received when that statement has been added to it?

The CHIEF BARON. We cannot give an anticipatory judgment.

Mr. DOWSE. No, my lord, but you might throw out some encouragement.

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The CHIEF BARON. Well, if that alteration be made, it appears to me that the document would then raise the real question. Of course I don't know what the attorney general may have to say on the subject.

The suggestion was further amended by the counsel for the prisoner.

Mr. HERON. Now, my lords, I have made the further alteration, as required by your lordships. The document now stands thus:

"And thereupon the said John Warren says that he was born in Cork, in Ireland, and that he is a citizen of the United States of America, under the allegiance of the United States of America, and that he has been a citizen of the said United States of America from the 1st of October, 1866, and that he still is a citizen of the said United States of America; and he says that by reason of the premises, and not otherwise, that he is an alien."

The ATTORNEY GENERAL. Still the document is equivocal, for he might have been born of American parents in Cork.

Mr. DOWSE. Sure no American would come over here to have a child born in Cork.

Mr. HERON. I shall now read to your lordships the letters of naturalization which the prisoner holds from the commonwealth of Massachusetts.

The ATTORNEY GENERAL. Is that document verified in any way?

Mr. HERON. It has on it a seal, which at all events will be recognized; it is a document under the seal of the United States of America.

The CHIEF BARON. Let us first decide whether we shall now receive the suggestion. Mr. Attorney General, do you see any objection to our receiving it in the shape in which it now stands? Of course I do not ask you to give any consent to our receiving it.

The ATTORNEY GENERAL. No, my lord; of course not.

The CHIEF BARON. Do you apprehend that in the statement that he was born in Cork there is anything equivocal?

The ATTORNEY GENERAL. Yes, my lord; because that is followed by an averment that he is a citizen of the United States, and under the allegiance of the United States. A man

born in Cork of American parents, who went back afterwards to America, would be unquestionably an alien.

The CHIEF BARON. Is it alleged that the prisoner was born of British subjects?

The ATTORNEY GENERAL. No, my lord; the document merely says he was born in Cork, and that he was an American citizen from the 1st October, 1866.

Mr. HERON. Well, my lords, I now tender this suggestion, and produce the letters of naturalization granted to the prisoner from the commonwealth of Massachusetts.

The ATTORNEY GENERAL. I object to the suggestion being received until it is further amended.

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Mr. HERON. I decline to amend the document any more. Your lordships may now pronounce judgment upon the matter.

The ATTORNEY GENERAL. I ask your lordships not to receive this document in its present shape, being ambiguous and immaterial.

Mr. Justice KEOGH. I think, Mr. Heron, you may very fairly meet the suggestion of the court. To raise the material question, you very properly inserted in the suggestion the statement that the prisoner was born in Cork. I take it that a person born in Cork, if born of American parents, would be an American citizen just as much as a child born in America of British parents would remain a British subject, though born, suppose, in New York. There can be no doubt about that. Then why should you hesitate to carry out your own view, and add the statement, "Born in Cork, and of British parents?"

Mr. HERON. Very well, my lord; I will do that. I will add the statement, "Born in Cork, of Irish parents."

The SOLICITOR GENERAL. Before Mr. Heron makes what I suppose is his final amendment, I would ask your lordships' attention to one other point. Allegiance is always an important element in this question—the allegiance under which a person was born. The facts always resolve themselves into the question. Under what allegiance was the prisoner born? I think that point ought to be stated in the suggestion.

The CHIEF BARON. Add the statement, "Born of British parents, under the allegiance of her Majesty." When that is done, Mr. Attorney, you will consider whether this is a document to which you can demur, or whether it is a document in which the proper course would be to refuse to make the order.

Mr. HERON. My lords, I consider the averment that the prisoner was born in Cork, of Irish parents, is amply sufficient, and I will not make any other amendment.

The CHIEF BARON. Then I should be disposed to rule that, the document being ambiguous, it should not be received.

Mr. HERON. I respectfully ask what is ambiguous in the document? It is distinctly stated that he was born in Cork, of Irish parents.

Mr. DOWSE. We will put in anything necessary to do away with ambiguity.

Mr. Justice KEOGH. What objection is there to saying, "Born in Cork, of Irish parents, in Ireland, under the allegiance of the Queen?"

Mr. HERON. I will say under the allegiance of the United Kingdom.

The ATTORNEY GENERAL. No; under the allegiance of the Queen.

Mr. HERON. (having again altered the document.) Very well; I have now made it, "Born in Cork, of Irish parents, in Ireland, then under the allegiance of King William the Fourth."

The SOLICITOR GENERAL. My learned friend puts in the word "then." What is the meaning of that?

Mr. HERON. "Then" means, when born, that his Irish parents were then under the allegiance of the King.

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The SOLICITOR GENERAL. In the way the sentence stands it might mean that Cork was under the allegiance of the King.

Mr. HERON [having again altered the document.] I have now made it thus: "his said parents and the said county being then," at the time of his birth, "under the allegiance of King William the Fourth."

The SOLICITOR GENERAL. What is the meaning of that? Surely no one ever heard of a county being under the allegiance.

Mr. HERON. I only put in the words in consequence of your own suggestion.

The SOLICITOR GENERAL. I never suggested that.

Mr. HERON. Well, I will strike out those words. [Mr. Heron then struck out the words "and the said county," and handed the document to the clerk of the Crown.]

The CHIEF BARON. Mr. Attorney General, I wish you now to consider and apprise us whether you think the course to be adopted (supposing the court should be of opinion in your favor) should be a demurrer on your part, and a judgment on the demurrer, or on ours simply a refusal to award the *venire* upon your representation that we should do so?

The ATTORNEY GENERAL. I think, my lord, our mode of reply would be a suggestion on the part of the Crown that the prisoner is not entitled to the jury *de medietate lingue*.

Mr. HERON. I have made every amendment.

The ATTORNEY GENERAL. I am sure you will make this also.

Mr. HERON. I think there is no difference, and, therefore, I consent to that.

The CHIEF BARON. One is only an inference from the other—that he was born of Irish parents, who were British subjects then, and born in allegiance to the monarchy.

Mr. HERON. Born of Irish parents, was my phrase, then under the allegiance of King William the Fourth.

Mr. Justice KEOGH. What do you propose to do now?

Mr. HERON. I have added the words “and that,” to make it read properly.

The suggestion as finally altered and filed was as follows:

“And, thereupon, the said John Warren says that he was born in Cork, in Ireland, of Irish parents, and under the allegiance of his late Majesty King William the Fourth, and that he is a citizen of the United States of America, under the allegiance of the United States of America, and has been such citizen of the United States of America from the 1st day of October, in the year of our Lord 1866, and still is a citizen of the said United States of America, and he says by reason of the premises, and not otherwise, that he is an alien; and he prays the writ of our said Lady the Queen to cause to come here twelve good and lawful men of said county, by whom the truth of the matter may be better known, and who are of no affinity to the said John Warren, to recognize upon their oaths, and inquire whether the said John Warren be guilty of the felonies in the said indictment above specified, or either or any of them, or not guilty and so forth, whereof one-half to be of natives, and the other half to be of aliens, to wit, born in the said United States of America, under the allegiance of the said United States of America, to try the issue of said plea.”

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The ATTORNEY GENERAL. I won't object to that. It may be entered. My lords, in answer to that suggestion, we say:

“That by reason of anything above said and suggested by the said John Warren, the said John Warren is not entitled to the writ of our Lady the Queen next above by him prayed, and that the same should not be granted to him the said John Warren.”

The CHIEF BARON. We are both of opinion that in the first instance we need not call on the Crown to state their objections to this application.

Mr. HERON. What I would say is this, my lords: It appears to me to have been in early times very much a matter of discretion with the government, whether or not they would give certain people the privilege of having a jury *de mediatate lingue*, as it was called in old times, and, as your lordship is aware, the king was in the habit of granting it by charter to the Lombards; he also granted to the Allemains, and other companies of foreigners in England, the privilege in all cases, civil or criminal, of having a jury *de mediatate lingue*. It appears to me at common law entirely within the discretion of the government; and at this moment it is within the power of the Attorney General to grant such a thing. It appears to me to be merely a matter of discretion at common law—a matter of favor from the government of the country—to grant a jury *de mediatate lingue* to any person. In a civil case, where the parties were plaintiff and defendant and adverse, it could only be claimed by either one or the other by express charter from the Crown; but it is in the power of the King at common law, in a trial between him and a subject, to give the subject a jury *de mediatate lingue*. I say, therefore, it is entirely in the power of the attorney general for the time being to say whether he will grant a jury *de mediatate lingue*. I say next, that in the management of the trial it is very doubtful whether this court has not the same power. At all events my client instructs me, as a citizen of the United States of America, to claim the benefit of a trial by a jury composed half of Americans and half of British subjects. He respectfully presses his claim, through me, on the court.

Mr. DOWSE. The matter comes before the court for the first time, and no authority can be cited for it, and we are obliged to argue the case on general principles. As to what my learned friend said on the common law, there can be no doubt. With reference to the word alien, we say the meaning of that is a person who is not under the allegiance of the Crown at the time, and my client stands in this position—he stands here having renounced his allegiance to the sovereign of this kingdom. He says he owes no allegiance as a subject of the Crown of Great Britain and Ireland. There is a document in evidence which is *prima facie* evidence of the fact of this man being what we call an alien—that is, his naturalization papers of the Commonwealth of Massachusetts, and by these papers he has announced his *bona fide* intention of becoming a citizen of the United States. By these papers he renounces fidelity to every foreign power, potentate, and sovereign, and especially to Queen Victoria, whose subject he had heretofore been. He is admitted by the superior court of the Common-

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wealth of Massachusetts, which, I believe, has authority under the statute in that case made and provided—he is admitted a citizen of the State of Massachusetts, which is one of the States of the United States of America, having renounced allegiance to the Crown of Great Britain and Ireland. Having lived a sufficient number of years, he obtained papers of naturalization. We say he is an alien, and that, though an alien, he is subject to the jurisdiction of this court, which has power to try him except by a venire awarding him a jury *de mediatate lingue*, which we say is to be composed, half of subjects of Great Britain and Ireland, and half of American subjects.

The ATTORNEY GENERAL. My learned friend Mr. Dowse says that if he gets a jury *de mediate lingua*, he is entitled to have half of them Americans. That is not the law.

MR. DOWSE. I say that does not arise. Give us the venire, and then we will argue that, but don't refuse us number two, when you say number one does not exist.

The CHIEF BARON. My learned brother and I do not entertain the least doubt as to the course we ought to adopt in reference to this proceeding. It is essential to sustain the application; and assuming the court has the power to grant it, the practice has been invariably to award a *jure de mediate*, as it is called, wherever an alien claims it. But assuming the authority of the court, upon which I will not now cast the slightest doubt, it is perfectly plain the person who claims a jury *de mediate lingua* must be an alien. It is very truly put by the counsel for the prisoner, that what the prisoner contends for in the present case is, that by reason of what appears—assuming the statement to be fact—what appears stated in the suggestion, he is an alien, and he is not now under the allegiance of the Queen. I cannot allow that proposition to be put forward without meeting it with a prompt and unhesitating denial. According to the law of England, a law which has been administered without any variation or doubt from the very earliest times, he who once is under the allegiance of the English sovereign remains so forever. It would be really almost pedantry for me to cite authorities on that subject. They are familiar to every lawyer. I shall cite one English authority, and I shall then cite some American authorities of the greatest weight and highest reputation. In the first volume of Blackstone's Commentaries, pages 269 and 270, the law is thus stated:

“Allegiance, both express and implied, is, however, distinguished by the law into two sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from natural-born subjects. This is a tie which cannot be severed or altered by any change of time, place, or circumstances, nor by anything but the united concurrence of the legislature. An Englishman who removes to France or to China, owes the same allegiance to the King of England there as at home, and twenty years hence as well as now. For it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former, for this natural

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allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. Indeed, the natural-born subject of one prince, to whom he owes allegiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties of owing service to two masters; and it is unreasonable that, by such voluntary act of his own, he should be able at pleasure to unloose those bonds by which he is connected to his natural prince.”

Blackstone then proceeds to show that local allegiance, which by foreigners is due to the monarch, continues so long as the foreigners reside within the kingdom. The maxim of the law on this subject, referred to by Sir Michael Foster, page 184 of his Treatise, and referred to by a variety of other authorities, is *nemo potest exere patriam*. I said I would only refer to one English authority. I have brought down, with a view to some possible matter which might have arisen, some American authorities, and I don't think it is useless to cite these authorities on the subject now before us. In Story's Conflict of Laws, page 23, section 21, referring to the general maxim or rule, that the laws of one state do not bind property or persons in another, he says:

“Upon this rule there is often engrafted an exception of some importance to be rightly understood. It is that although the laws of a nation have no direct binding force or effect, except upon persons within its own territories, yet that every nation has a right to bind its own subjects by its own laws in every other place. In one sense this exception may be admitted to be correct and well founded in the practice of nations; in another sense it is incorrect, or at least it requires qualification. Every nation has hitherto assumed it as clear that it possesses the right to regulate and govern its own native-born subjects everywhere, and consequently that its laws extend to and bind such subjects, at all times and in all places. This is commonly adduced as a consequence of what is called natural allegiance; that is, of allegiance to the government of the territory of a man's birth. Thus, Mr. Blackstone says, natural allegiance is such as is due from all men born within the King's dominions immediately upon their birth.”

He then proceeds to quote the passage from Blackstone which I have cited. In Chancellor Kent's Commentaries, in the 2d volume, page 42, the following is laid down as the English law. He is expounding the American law; and expounding the American law, founded as it is on the law of England, he says:

“It is the doctrine of the English law that natural-born subjects owe an allegiance which is intrinsic and perpetual, and which cannot be divested by any act of their own.”

He then cites an English authority, in the case of McDonnell, who was tried for high treason in 1746, by Lord Chief Justice Lee, and who, he says—

"Though born in England, had been educated in France, and spent his riper years there. His counsel spoke against the doctrine of natural allegiance as slavish and repugnant to the principles of their revolution. The court, however, said that it had never been doubted that a subject born, taking a commission from a foreign prince and committing high treason,

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was liable to be punished, as a subject, for that treason. They held that it was not in the power of any private subject to shake off his allegiance, and transfer it to a foreign prince; nor was it in the power of any foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of allegiance between that subject and the Crown. Entering into foreign service without the consent of the sovereign, or refusing to leave such service when required by proclamation, is held to be a misdemeanor at common law."

Chancellor Kent then deals with the question, how far the doctrine of the English law prevails in America. He says:

"It has been a question (here he leaves the English law, and proceeds to expound the other) frequently and gravely argued, both by theoretical writers and in frequent discussions, whether the English doctrine of perpetual allegiance applies in its full extent to this country."

That is, whether in America that doctrine is recognized. Its recognition there or repudiation could not in the slightest degree affect this country or its tribunals. Chancellor Kent then proceeds with an elaborate review of the authorities, and he closes thus, stating his view of the American law:

"From this historical review of the principal discussions in the federal courts on this interesting subject of American jurisprudence, the better opinion would seem to be, that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law; and that, as there is no existing legislative regulation on the case, the rule of the English common law remains unaltered."

I have thought it right to cite these two great American authorities—Mr. Justice Story in his book on the conflict of laws; that is, on the laws of nations as they relate to each other—and Chancellor Kent, expounding the laws of America, and expounding it in the first instance by an exposition of the law of England, which is its foundation. We in our courts have been in the habit of treating, not merely with respect, but with reverence, these two great lights of the laws of America. We have cited them in our courts of justice; they have been quoted in our forensic discussions. The principles laid down by them, in interpreting in America the laws of England as they are adopted there, have been approved and adopted by some of the ablest judges that have sat on the British bench. Mr. Justice Story was himself a great judge; so was Chancellor Kent; and some of the finest contributions that have ever been made to the science of jurisprudence, or to the law of England as a science, have been made by these two great men from whose works I have read these passages. I have thought it not unuseful, since I had the opportunity of doing so, of stating that this was the law as laid down by the great authorities in America, because I think it is desirable that they who in America formed views—I will say no more now than that—with respect to what is passing, or what is expected to pass, within the dominions of the Crown of England, should be aware of the obligations imposed on them if they have ever been under the allegiance of the Crown of England; and how, according to the laws of England, they may

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be dealt with when they are found here. For these reasons we are of opinion that the objection made by the attorney general is well founded, and that we ought not to comply with this application, and that the prisoner is not entitled to a jury *de medietate lingue*.

The clerk of the Crown then called over the names on the long panel.

Twenty jurors were challenged by the prisoner, and four jurors were directed by the Crown to stand aside.

The following jury was sworn:

William Mercer, (foreman).
Alfred Davis.
George Cooke.
Henry William Hepburne.
William Henry Mellons.
Edward Nolan.

William Marrior.
Robert Robinson.
William Shaw.
Robert Thacker.
Charles David Spiinks.
William Whyte.

The clerk of the Crown then read the heads of the indictment, which charged the prisoner in the first count, that he did on the first of March, 1867, and divers other days, feloniously compass to depose the Queen from the style, honor, and royal name of the imperial Crown of Great Britain and Ireland, and that said compassings he did express by divers overt acts, which were stated in the indictment. A second count in the indictment charged that the prisoner, on the 12th of April, 1867, and on various other days, did feloniously compass to levy war against our lady the Queen in that part of the United Kingdom called Ireland, and in order to compel her Majesty to change her measures and counsels, and which said compassing he did express by various overt acts.

The attorney general rose to state the case for the Crown.

The PRISONER. My lords, as a citizen of the United States, I protest against being arraigned at this bar, and being tried as a British subject.

The CHIEF BARON. We cannot hear any statement from you now.

The PRISONER. Only a few words, my lord.

The CHIEF BARON. We cannot hear you. You have pleaded; your counsel has been heard in your behalf, and the course of the court is to proceed with the trial of that plea. We cannot hear anything more.

The PRISONER. I instruct my counsel to withdraw from the case, and I place it in the hands of the United States government; which government has now become the principal.

Mr. HERON. That being so, my lords, we have no alternative in the case.

The CHIEF BARON. I do not know that.

Mr. HERON. I should state to your lordship that this is not a hasty determination on the part of the prisoner.

The CHIEF BARON. The plea of not guilty is before us, and that plea must be tried, whosoever appears.

Mr. HERON. When he withdraws from his counsel the privilege of appearing, I apprehend your lordship can allow the prisoner to make a statement.

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The CHIEF BARON. He is at liberty to withdraw his plea if he thinks fit, but, with the plea before us, the only thing we can do is to proceed with the case.

Mr. HERON. The prisoner says he adheres to his determination, and that, my lord, leaves me no alternative.

The CHIEF BARON. That is for you.

Mr. DOWSE. It leaves me no other alternative either. I intend to yield to the suggestion of my client. If he withdraws his case from me, I have no further right to appear, and I disappear accordingly.

The CHIEF BARON. All I can do is to proceed with the case. Now, Mr. Attorney.

The attorney general again rose to address the jury.

Mr. HERON. My lords, permit me to say, before I withdraw, that, in my humble judgment, the prisoner should be allowed to state his reasons for this course.

The CHIEF BARON. We shall receive from you any statement on his behalf.

The ATTORNEY GENERAL. Gentlemen of the jury: No one can regret more than I do the transaction which you have just witnessed.

Mr. ADAIR. I beg your pardon for a moment.

The ATTORNEY GENERAL. Are you counsel in this case?

Mr. ADAIR. I am. I thought it only right to the prisoner to say I was instructed, on the part of the United States government, to appear in six cases, to watch the proceedings, and to report to them at my discretion. I told the American consul and his solicitor—

The ATTORNEY GENERAL. I think this is a most unreasonable interruption.

The CHIEF BARON. We shall not inquire into the manner in which you obtained your authority.

Mr. Justice KEOGH. Are you engaged for the prisoner at the bar? If you are not it is most irregular.

The ATTORNEY GENERAL. For whom do you appear?

Mr. ADAIR. I will answer every question put to me, but I am not to be spoken to in that way. I am instructed by the United States government consul to appear and watch the proceedings in the other cases. When counsel withdrew from this case, the consul thought it right for me to appear for him, and the United States government too, and to see this case, as far as I can, properly conducted. I want to know from your lordships how far it is my duty and privilege, as counsel, to attend and interfere, or not interfere. I don't want to volunteer. It is not my professional habit to act irregularly.

The CHIEF BARON. If you are not acting as counsel for the prisoner we cannot allow you to interfere; if you appear for the prisoner we shall not inquire further, but we cannot recognize the counsel employed by persons who are unconnected with the proceedings itself.

The ATTORNEY GENERAL. Gentlemen of the jury: I regret these two transactions. I re-

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gret that any member of the bar should interrupt the progress of the case, knowing that no gentleman has a right to address the court or the jury except he is retained on the part of the Crown or the prisoner; and I also regret deeply that the prisoner should have deliberately rejected the assistance of his eminent counsel—experienced in the law, learned and eloquent, and possessing every qualification for his defence. I had hoped when concluding my statement to be able to express the gratification it afforded me that the prisoner was defended in such a manner as that, if convicted, it would be because he was wholly indefensible. This, gentlemen, is not the fault of the counsel for the Crown. They are no party to the withdrawal of the prisoner's counsel. It is his own act, and upon himself the consequences must fall. I wish even now that he would change his mind, and avail himself of that assistance which may be of importance for the protection of his liberty.

The CHIEF BARON. Perhaps it is my duty to state what the prisoner may be ignorant of,

that so long as his plea of "not guilty" remains recorded, and so long as he does not plead guilty, the case must be proceeded with; the statement for the Crown must be heard, and the whole evidence for the Crown must be heard and submitted to the jury.

The PRISONER. I am prepared for all that, my lord.

The attorney general resumed: Gentlemen, without preface, I propose to make a statement to you, as brief as I can, as clear as I can, and, above all things, as fair towards the prisoner at the bar as I can, of the case which it is proposed on the part of the Crown to bring before you. I shall state very shortly the nature of the crime charged against him, the circumstances under which he is charged with that crime, and an outline of the evidence which we shall submit to your consideration, in order to show that the prisoner was involved in that crime, and was personally a guilty party in the transaction. Gentlemen, the crime alleged against the prisoner is called "treason-felony," and it consists in compassing or imagining the deposition of the Queen from her royal state, or compassing, imagining, or intending to levy war against the Queen, and manifesting such guilty intentions, by open external acts, when such compassings or intentions are manifested by one who owes allegiance to the Queen of the United Kingdom. The intention and design of a man are within his own heart: it is only by his open and external acts—what are called in the law books his "overt acts"—that his intention and design can be known. Accordingly, gentlemen, the evidence that will be produced as bearing on open external acts will show that the prisoner has done these overt acts alleged against him, and your concern will be simply with the evidence brought before you on these overt acts. If you shall arrive at the conclusion that any one or more of the overt acts alleged in this indictment is or are truly and justly laid to the charge of the prisoner, then it necessarily follows, from the proof of the overt acts to your satisfaction, that the prisoner is guilty of the crime of treason-felony.

Gentlemen, this indictment contains a great variety of overt acts. It will not be neces-

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sary to call attention to all these overt acts, but I shall mention a few of them. In the first and second counts he is charged with conspiring with notorious Fenian leaders for the purposes of the Fenian conspiracy. In the fifth count he is charged with attending Fenian meetings. The sixth count I shall allude to shortly, because it refers to transactions which will be related to you. It charges that the prisoner did embark on board a certain vessel in America, having on board guns and pistols, came to the west of Ireland, and sailed and cruised along the coast with the intention of effecting a landing, and of landing arms for the purpose of fighting against the Queen, and raising an insurrection in Ireland. The seventh count alleges that he sailed into a certain bay called "Sligo bay," for the same purpose of levying war against the Queen. The eighth count alleges that he joined a treasonable conspiracy in America called the "Fenian Brotherhood." The tenth count charges that he conspired to provide arms, to make war against the Queen. The fifteenth that he became a member of an association called the "Fenian Brotherhood," which had for its object the overthrow of the Queen's authority and the establishment of a republic, and made journeys, and collected moneys, &c., for that purpose. The sixteenth count alleges a levying of war in the county of Dublin; and the twentieth alleges that in Sligo bay he administered an unlawful oath to Michael Gallagher, to keep secret certain acts and deeds of the Fenian Brotherhood.

There is first the charge of conspiracy. If you are satisfied upon the evidence that the prisoner was a Fenian conspirator, then that will be proof of an overt act sufficient to sustain the indictment, and to oblige you to find a verdict of guilty. The only overt act on which I shall now make an observation is that of making war in the county of Dublin, because there will be no evidence that the prisoner personally levied war in the county of Dublin; but that charge is introduced because evidence will be given that members of the same conspiracy did levy war in the county of Dublin; and then, according to a well-known principle of law, not confined to the United Kingdom, but recognized also in the United States, every man who joins in a criminal conspiracy is liable and responsible for and guilty of the acts of all his conspirators, which are done in furtherance of the purpose of the conspiracy. And if it shall appear to you, gentlemen, that the prisoner was a member of a conspiracy having for its object the establishment of a republic in Ireland, and that other members of the same conspiracy levied war against the Queen in the county of Dublin, the prisoner himself is guilty of that levy of war. And the object of introducing it into the indictment is to give you, as jurors of the county of Dublin, jurisdiction to try the offence; because, by a principal of our law, a man can be tried only in the venue or place where he has, by himself or by the agency of his co-conspirators, done the acts which are charged against him.

Gentlemen, I have spoken of this conspiracy as a Fenian conspiracy. Unfortunately, it is almost unnecessary to speak to you of the nature or the history of the Fenian movement; but it will be my duty to occupy some time upon that subject, because you are not at liberty

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to act as jurors except upon the evidence which will be brought before you. You come into that box to try the prisoner as if you had never heard of that conspiracy, to try a man who at this moment must be presumed to be innocent of the crime charged. And therefore, you

must be satisfied upon the evidence of two things: you must be satisfied of the existence and nature of the Fenian confederacy, and that, beyond a reasonable or substantial doubt, the man who is now presumed to be innocent is, notwithstanding that presumption, guilty of the crime imputed to him in the indictment.

The Fenian conspiracy was organized in Ireland and America for the purpose of establishing a republic in this country—for the purpose of deposing the Queen from the crown of this country, and of subverting the government. It was established for the purpose of destroying the social system of the country, of confiscating property, and of plundering the present proprietors of their possessions. These objects were to be achieved by the conspirators by force of arms and insurrection; because such objects as these could not be accomplished by any moral persuasion or influence. This conspiracy had leaders, civil and military. It had men holding ranks known as "A's," "B's," and "C's," "centres," "head centres," "delegates," and "organizers." Amongst the men who held these offices were enrolled a great number of discontented and disaffected men—men without property or possession—men for the greater part without education. In my experience of the Fenian conspiracy I have not yet heard, as being connected with it, the name of one man of property or possessions, or who had one material thing to lose by rebellion. It comprised men of the lowest orders in this country, and men of a somewhat superior class who came from another place to take the leading part in the insurrection.

This Fenian conspiracy existed in America before the breaking out of the civil war between the northern and southern States. When that struggle closed, the immense armies on both sides were to a large extent disbanded; and the consequence was that great numbers of American soldiers and of officers in the American armies were thrown upon the world without employment or occupation, and the result was that these men, thus deprived of what had been their means of livelihood, became members of this conspiracy. They were men of courage from their antecedents and of ambition from their circumstances, and they threw themselves into the cause of the Fenian conspiracy with all their hearts, expecting, as a reward for their services, places in the new commonwealth, and a liberal share of the spoil which was to crown the efforts of the insurgents.

In the winter of 1866 and 1867, the plans of these conspirators were to a certain extent matured, and it was resolved to rise in open insurrection in this country. It was resolved first to rise in February last. That attempt proved abortive, and it was then resolved to rise again on the 5th of March last. And accordingly on that day the rising took place, and amongst other counties in the county of Dublin, as alleged in the indictment. That attempt at insurrection happily failed. The conspirators failed from their own infirmity, and because

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of the power and vigilance of the government, and in consequence of valuable information which was communicated to the government by one who had served in the American army, who had been an active Fenian, but who, at the time of giving this information, was in the employment of the government. The insurrection, fortunately for all parties, perhaps most so for the disloyal, had not even a momentary success. A few policemen and a few coast-guards were made prisoners of war, in the name of the Irish republic; a few houses were plundered and burned; there was a little bloodshed, but there was a great failure of this attempt at insurrection, which burst forth in so many parts of Ireland, and was contemplated in others.

Although that rebellion was most disastrous as regards the social and material prosperity of Ireland, it was in itself contemptible, almost as contemptible as another Irish rebellion, which the vanity of a foolish gentleman instituted in this country some years ago, and which he brought to an issue in a memorable battle amidst the derision of Europe! One would have thought, gentlemen, that the issue of the "rising" of the 5th of March would have been a lesson to the Fenians in this country and in America—that it would have taught them by experience the folly of these efforts. But, unfortunately, even the lessons of experience are sometimes thrown away on desperate men. Scarcely had the 5th March passed by—scarcely had the unfortunate men who went out for the purpose of rebellion found shelter from the pelting of the pitiless storm—some in their cabins, some in ships to convey them to distant lands, some in miserable jails—when a new expedition of desperate men was organized for the purpose of aiding the Fenian conspiracy; and it is with the details of that extraordinary expedition, which, as the lord chief baron said in charging the grand jury, shows that "truth is sometimes stranger than fiction," that you, gentlemen, will be chiefly occupied during the progress of this case. I shall proceed to state to you that transaction; but you must bear in mind that it is not the only charge against the prisoner. The charge against him is twofold. One is, that he is a conspirator, and a member of the Fenian conspiracy; and if, upon the evidence, you are satisfied of that, you are bound to find a verdict of guilty, irrespective of that extraordinary transaction which I am now about to disclose.

John Warren, the prisoner at the bar, was, as you have heard, born in the county of Cork. Some years ago, before 1865, he emigrated to America, and he there entered the military service of the United States. He rose to the rank of captain, and in 1862, for some cause or other, he was dismissed from the American service. About 1862 Captain Warren was a prominent member of the Fenian conspiracy in America, and he became the head centre for

Massachusetts. The 5th of March had passed, and I suppose the news of what happened here on that date must have reached America before 12th April; but on 12th April, 1867, a party of forty or fifty men, almost all of them officers or privates, or who had been so in the service of the American government, dropped down in a steamer from New York to Sandy

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Hook, a distance of about eighteen miles. At Sandy Hook they found a vessel of 113 tons burthen, which had been purchased for the purpose of the expedition, and in this brigantine they embarked and sailed for Ireland. The name of that ship was the *Jackmel*. She sailed without papers, and she had no colors when they started. Of course, gentlemen, the object was to avoid suspicion. Her object must have been some irregular project, or she never would have sailed without papers, because, as you know, the navigation of a ship is encountered with great difficulty if she is found sailing without papers, and papers, of course, could not be got from the American government. They sailed without colors.

The men got orders to embark without luggage—rather an extraordinary thing for a party of forty or fifty men, most of them officers, to embark for a distant voyage without any luggage. I shall be able, gentlemen, before I close, to give you the names and military rank of almost every man who embarked on board that vessel; and, I think, their military rank is a circumstance impossible to be reconciled with a legitimate project. That forty or fifty men, generals, officers, and privates, should embark on board that ship, and sail from New York to Ireland without any luggage! Of the forty or fifty no fewer than thirty-one were arrested in Ireland by the constabulary, as I shall by-and-by explain. Among the men who left New York on the 12th April, who embarked on board the *Jackmel*, and who were afterwards arrested, was a man named Buckley, who will be produced as a witness; a man named Nolan, who will be also produced; a man named Nagle, called “General Nagle,” and Captain Warren, or, as I understand, he was called in the Fenian service, “Colonel” Warren. The captain of the vessel was named Kavanagh, and the name of the commander of the expedition was Kerrigan. Neither of the two last mentioned is in custody; but I understand it will be proved that Kerrigan filled the office of brigadier general in the American army, and was at one time a member of the American Congress. These men did not sail on this expedition without some cargo, though they had no luggage. They had a very large quantity of fire-arms of various kinds. The arms were packed in piano cases, in cases for sewing machines, and in wine casks, so as to conceal them effectually. These arms, thus packed in these cases, were for the purpose of concealment, consigned to some mercantile firm in the island of Cuba; and during the voyage some of the large cases were opened, and the contents repacked in smaller cases, no doubt for the convenience of landing.

The *Jackmel*, as I have said, sailed without papers or colors. After one day’s sailing towards the south, in the direction of the West Indies, her course was changed, and the ship was steered towards Ireland. When vessels occasionally came in sight English colors were hoisted, as a further means of deception, and so the party proceeded on their voyage. Nothing remarkable occurred until Easter Sunday, the 21st April, nine days after they sailed.

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They resolved to celebrate this day as a high festival; and accordingly they hoisted a green flag with the sun-burst to the mast-head; they fired a salute, and they changed the vessel’s name to the “*Erin’s Hope*.” What a mockery to call that vessel “*Erin’s Hope*,” as if any good could be hoped for from such an expedition, organized in such a way, led and conducted in such a way, and having such an object as kindling the flame of insurrection in Ireland, to the destruction of the peace and prosperity of the country. *Erin’s Hope*! On the same day Kavanagh, who was in charge of the vessel, produced Fenian commissions, and distributed them among the officers on board, and informed the people in the vessel that his instructions were to sail to Sligo, and land the men and arms there; and that if he failed from any cause to land the arms and men there, then he was to proceed to some other place where there were fewer difficulties to be encountered. This was on the 21st of April.

The ship proceeds on her voyage; she sailed northward towards Sligo, and arrived off Donegal; then she came back and arrived at Sligo bay on the 20th May, and here, according to the sealed orders of Captain Kavanagh, the arms and men were to be landed. Of course it would be a perilous thing to attempt to land them without some communication from the shore, and for several days the *Jackmel* continued coasting along the shore, sometimes coming into the Bay of Sligo. Whilst there, several transactions of a curious character, important and interesting, as affording a means of testing the credibility of the witnesses, occurred during the six or seven days. The first thing we know to have occurred almost immediately after the vessel arrived off the coast of Sligo, was that the ship’s boat was sent out, landing two men named Shea and Doherty, and of these men I know nothing further, for they have not been arrested. The next matter to which I call your attention was that the man named Buckley, who will be produced, accidentally, whilst the vessel was coasting up and down, discharged his revolver, when in the act of cleaning it, wounding a man named Smith, who is still in hospital, and also a man named Nolan. In consequence of these wounds, it was considered desirable not to keep them on board, and accordingly the boat was sent out with the wounded men, accompanied among others by a man named Nugent, and these three were after a short time arrested and taken into custody.

The next incident is a very singular transaction. On the coast of Donegal bay, which is situated just to the north of Sligo bay, is a pilot station, and Michael Gallagher, a pilot, was looking out for some occupation in his profession when he saw this brigantine, the Jackmel. Accordingly, he put out from the station, and was hailed by those on board the ship. They called on him to come on board. He went on board and saw the man who had charge of the ship, and this man told him that the captain had gone ashore at Sligo, which was not the fact. They had some conversation, in the course of which the man in charge told him, "We are come from Spain; we have a cargo of fruit on board, and we are going to Glasgow." After a little conversation the man in charge directed Gallagher to go to the cabin. He did so, accompanied by the man in charge, and in the cabin he found two officers. The

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two men in the cabin were Nagle and the prisoner Warren. Nagle immediately, in the presence of Warren, proceeded to examine the pilot, and put a variety of questions to him. He asked him about the Fenians, and whether he was himself a Fenian. Gallagher said he was not. "Why don't you become one?" said Nagle. "O," said Gallagher, "I have a wife and children, and I don't want to have anything to say to such things;" as sensible an answer, gentlemen, as could be given to one who was attempting to draw him into a miserable conspiracy of the kind. After this conversation Nagle produced a book, and called upon Gallagher to swear that he would not give any description of the ship when he went on shore. Gallagher refused, and made a variety of excuses. He said he had never taken an oath before on board ship; but, at all events, he manifested the greatest reluctance and unwillingness to take the oath. Nagle asked him first, and Warren afterwards intervened, and ordered the pilot to take the book in his hand. He still refused, when the man in charge produced a pistol, and threatened to shoot him if he did not take the oath; and thereupon, Gallagher, naturally enough, with a pistol to his breast, took the required oath that he would not describe the vessel when he went on shore. He was then allowed to return on deck. He had sent his own boat away, and in a short time after a small hooker came alongside, and out of it came a man, apparently a gentleman, who immediately went into the cabin. In a short time he came up on to the deck, the hooker still lying alongside the vessel, and ultimately he got into the hooker and proceeded ashore. Gallagher attempted to follow him, but he was forcibly dragged back. However, when the wounded men were sent ashore, Gallagher was sent with them, and when the party landed, he ran as fast as he could until he met two coast guards, who took him under their protection.

The importance of this evidence, gentlemen, will be evident; and, indeed, the circumstance of administering the oath is one of the overt acts charged. Another transaction with reference to the gentleman who came alongside the brigantine in a hooker, who was well known by many of the officers, and whose name was Colonel Burke, is, that after he had been some time in the cabin, he, with one of the officers of the expedition named Prendergast, who is not arrested, landed with two or three other men on the shore. Up to this time the brigantine had been waiting for an opportunity to land the arms at Sligo. On the day after Burke was in the cabin, the inferior officers on board the ship were assembled, and informed that they could not land the arms at Sligo, and that they were to put to sea. Manifestly Burke had told them that from the way matters stood on shore it would not be safe for their men to land or to put the arms ashore, and on the 26th May the ship left the coast of Sligo. I cannot say whether she sailed along the western coast of Ireland or by the north coast and by the Irish channel. My own impression is that they came down, passing Dublin by the Irish channel. But however that may be, gentlemen, on the 1st June the ship was off Dungarvan, on the Waterford coast. While she was there councils were held on board, at which they

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discussed what was prudent to be done for the expedition under the circumstances. They had failed in Sligo, their provisions had become short, and they could not remain much longer at sea. These matters were the subjects of discussion among the American officers. They divided on the question—some were for landing and some against it; but at last the conclusion was come to, overruling the opinion of some, that the majority of the officers and men should be landed, and that the remainder should either go to America, or some place called the western islands.

That conclusion was arrived at on or before the 1st of June: and on that day a fishing-boat belonging to a man named Whelan came alongside. Whelan, who speaks Irish, saw only four or five men on board, and the spokesman said, "We want to put two men on shore, and we will give you £2 for taking them." Whelan came alongside, and went on deck, and whilst he was there twenty-eight men rushed upon the deck of the brigantine, and into the fishing-boat. Whelan had nothing for it but to take them ashore. Accordingly, he began to proceed towards shore, and he asked them where they wanted to be landed, desiring to know whether he should go to Helvie Point—the nearest point of land. They asked, "Is there a coast guard station there?" I suppose their attention was roused by the appearance of the detached white houses of the coast guard station. He said there was, and they replied that would not do. "Will I land you at Dungarvan?" said he. "No," they said. "Where, then, will I land you?" said Whelan, or one of his men, and they pointed out a place on the shore where there was no regular landing place. Accordingly, Whelan ran

his boat into the place indicated. The boat, heavily laden, grounded in three and a half feet water, and the men jumped out and ran on shore, without taking off their shoes or stockings, or their trowsers, which were wet, and covered with sand and mud. Among the men who thus landed were Nagle and Warren, the prisoner, and Buckley, the witness, who will be produced to you, and who was the last man who came out of Whelan's boat on that occasion. A coast guard, vigilant in his duty, saw a boat coming ashore. He did not see the men as the boat was passing Helvie Point, but he saw them as they were jumping ashore. He gave information, and the constabulary were on the alert to arrest these men.

Gentlemen, we shall not follow the course of all of them. They broke into small parties; and we will confine our attention to two—the prisoners Warren and Nagle. There is a man named Andrew Roche, who lives in a farm-house a short distance from where the boat landed. Warren and Nagle, with their trowsers wet, went up to the house of this man Roche, about eleven o'clock on the 1st of June. He was at work in his garden, and they asked him how far it was from Youghal. He said about twelve miles. They asked for a conveyance, and he said he had a car and pony, and that he would take them if they paid him, and they agreed to pay him five shillings to take them to Youghal. These men were wet up to the middle. Warren and Nagle drove towards Youghal, and when they arrived at the bridge

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across the Blackwater they met a constable named Norris, who had received information, and was on the alert. He observed that they were strangers, and that their trowsers were wet. He asked them where they came from. Warren said, "We come from Dungarvan." He asked where they belonged; Warren said his name was John Donovan, and Nagle said his name was William Palmer. I do not wish to anticipate the witness; but it will be proved to you that they said, "We were on a fishing excursion; our vessel took fire, and we escaped, and got ashore in a fishing boat." Thereupon Norris said it was his duty to arrest them and he did arrest them. They were searched, but they had no arms. When searched at the police barrack nothing was found on the prisoners; but on Nagle were found some documents which you will have before you; but, gentlemen, stating this case as I am, in the absence of counsel for the prisoner, I don't think I would be justified in reading those documents until his lordship shall have decided that the evidence is admissible against the prisoner.

This was the end of the Jackmel expedition. The twenty-six men who were on board the lugger were all arrested in different places within four and twenty hours. That, gentlemen, is the principal transaction you have to investigate. It will be sworn that that expedition was fitted out for Fenian purposes; and the question will be, whether you will have any difficulty in believing the statement that that was the object of the expedition. Gentlemen, you will ask yourselves, what does all this mean—what brought all these soldiers to this country—what brought all the arms on board? Were they brought for a legitimate purpose, or were they brought by men who had engaged to aid the Fenian conspiracy, and to assist traitors in this country to rise in insurrection against the Queen? What cause brought Warren there—what brought him on board that vessel—what brought him in the cabin of the vessel off Sligo, when he compelled Gallagher to take an oath? What was the purpose that induced Warren to give a false name when arrested, and to give a false story? because the story of the burned ship will be proved to be false. If they came for a legitimate purpose, they would state what it was. If they came from Spain with fruit, there would be no concealment of the transaction, no suspicious movements, no false names, no effort to avoid the observation of the coast guards. People resort to falsehood when they have a crime to conceal. If it was a Fenian expedition all is intelligible.

Gentlemen, the issue is a single one. You will first have evidence of the fact of the Fenian conspiracy, and that the prisoner was a member of it. You will then have evidence that the Jackmel expedition was fitted out to promote the Fenian conspiracy. That is another case for a conviction, if you believe the evidence I have detailed. What the defence will be I cannot conceive. The most important consideration for you will be to weigh the evidence. Unless you believe the informer, and unless, in addition to believing him, his statement is confirmed by some evidence of an unquestionable character, the prisoner will be entitled to an acquittal. Gallagher, the pilot, will be produced, and he will corroborate Buckley; but

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it is sufficient for me to say that the great consideration for you is, to see whether the evidence is worthy of credit. If you have a substantial doubt, acquit the prisoner; but, gentlemen, you understand the meaning of a substantial doubt. It is not the possibility of a man being mistaken, or of a witness telling a falsehood; but after applying all reasonable tests to the testimony given, the question is, on the whole are you satisfied that the evidence is true and that the prisoner is guilty?

Gentlemen, this case is one of great importance; its importance cannot be exaggerated. If the prisoner be not guilty of the crime laid to his charge, it is of importance to him and to the administration of the law of this country that he should be acquitted. He has the benefit of presumed innocence as he stands at the bar; he cannot be divested of that presumed innocence without evidence to satisfy you that he is not innocent. But, on the other hand, gentlemen, it is of the greatest importance that the prisoner should be convicted if he be guilty of the crime laid to his charge; no man can dispute that proposition. For the

ignorant peasant, tempted and seduced into treason, we can feel sympathy; but I can feel no sympathy with the man who comes from another country; who deserts his adopted home to be a firebrand in our country; to excite the people to their own destruction, to misery; and ruin. It is of deep importance to the welfare of Ireland that strangers should be deterred from such wanton and wicked aggressions on her peace and her prosperity. Gentlemen, if the prisoner is not guilty, acquit him. The more grievous the crime charged, the more important it is that he should be acquitted if he be innocent. But if he be guilty, let nothing prevent you, let no considerations whatever prevent you from doing your duty to your country by convicting him of this great crime.

No man surveys the United States with more admiration than I do. When I look at her unbounded resources, and the indomitable energy of her people; when I think of the gigantic struggle through which she has just passed, I see for America a future of greatness, exceeding, perhaps, that of Rome, perhaps that of Britain. Let the citizens of America, whether native citizens or adopted citizens, lend their energies and efforts to achieve that greatness; we envy them not; but in the name of humanity, let them not come to our country to augment her evils, to increase the divisions between her people, and lead them to their ruin. Let America and her sons rejoice in her great power, but let them not seek to disturb the peace of other kingdoms.

"Illâ se jactet in aula
Æolus et clauso ventorum carcere regnat."

Gentlemen, I conclude. I know that you would give to any case your diligent, your patient, and your conscientious attention. To this case you will give especial care and attention, because the prisoner is undefended by counsel. Once more, gentlemen, I repeat, acquit him in the name of justice if you have a reasonable doubt of his guilt; but if you have none, then your verdict, as a matter of course, will be a verdict of guilty!

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THURSDAY, October 31, 1867.

The court sat at 10 o'clock a. m., this day, and resumed the trial of John Warren.

The jury having answered to their names, the following evidence was given on behalf of the prosecution:

DANIEL BUCKLEY, examined by the **SOLICITOR GENERAL**:

Buckley, where were you born?—In Ireland, sir.

What age are you?—About 25, as far as I know.

Where in Ireland were you born?—I believe in Munster.

Shortly after your birth were you taken to America, or did your parents emigrate to America shortly after your birth?—I suppose so; I have no distinct recollection of the country.

But do you remember when a child being in America?—Yes, when I was not very old, at least.

What part of America did you live in?—New York.

Did you enlist in any of the military services when you were there?—During the last war I did, sir.

Was it the northern or confederate army?—The northern.

And about how long ago is that?—In 1861, I think.

How long did you serve in the regiment you first enlisted in?—I served somewhat about two years in that regiment.

And did you then remove to another?—Yes.

Did you serve through the whole of the American war?—I served from the first battle.

Until when?—Until its close.

And when did you leave the service—what month, do you remember?—In August, 1865.

Did you become a member of the Fenian organization at any time when you were in America, since leaving the army?—I connected myself for a time with the Fenian organization.

Did you take any pledge when you joined it?—Yes.

And what was the pledge that you took?—Simply I pledged my word and honor.

To do what?—Not to divulge the objects for which the organization was founded.

The **CHIEF BARON**. You said you pledged your word and honor not to divulge what?—The objects for which the organization was founded.

The **SOLICITOR GENERAL**. What were those objects as communicated to you?—For revolutionary purposes.

In connexion with any country, was it?

The **CHIEF BARON**. Let him state what the objects were?

The **SOLICITOR GENERAL**. What were the objects—what revolutionary purpose?—To revolutionize Ireland, sir.

In what way?—By giving Ireland a republic.

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The **CHIEF BARON**. Making Ireland a republic?—Yes.

The **SOLICITOR GENERAL**. Did you pay any subscription when you so joined?—I did, sir.

For how long, and what amount?—I paid ten cents a week for somewhat less than a year—not more than a year.

Was 't in New York you took that pledge and joined that society?—Yes, sir.

Did you join any expedition last year in connection with that society?—Last year, yes.

And what was that expedition?—I did not know the objects of the expedition. I went merely to the State of Maine.

Was it with other members of the society?—Yes.

The CHIEF BARON. You went to the State of Maine with whom?—With others connected with the Fenian Brotherhood.

The SOLICITOR GENERAL. Did you yourself do anything in Maine, or the members who were with you?—No, sir.

You came back again?—Came back again soon.

In February of this year were you introduced to any person in New York in connection with Fenianism?—Yes.

To whom were you so introduced?—To Colonel James Kelly.

By whom were you introduced?—By a man named Costelloe.

Who was Colonel James Kelly?—He was at that time the head of the military department of the Fenian Brotherhood.

In what place?—New York, sir.

Did Kelly communicate to you the plan of any proposed expedition?—He communicated to me an expedition.

What did he tell you of it?—He said there was such a thing setting on foot; he did not tell me when it was to start.

The CHIEF BARON. What did he say about setting on foot?—An expedition.

He did not tell when it was to start?—No.

Did he tell you where it was to go?—No.

The SOLICITOR GENERAL. Did he tell you it was a Fenian expedition?—Yes.

Did you agree to join it?—Yes.

And did you meet Kelly frequently in connection with that proposed expedition.—Yes; some three or four times afterwards.

Where in New York did you see him?—19 Chatham street.

Was that the headquarters of the organization in New York at that time?—Yes, sir.

Now, was anything done in regard to that expedition; any pledge or oath?—Yes, sir; there was an oath.

Was it administered to you?—Yes.

By whom?—By John Hogan and James Kelly.

The CHIEF BARON. That is Colonel Kelly?—Yes.

The SOLICITOR GENERAL. What was that oath?—That I would not divulge the secrets of the expedition.

Did you after that go to any place in consequence of having received an intimation in regard to that expedition in New York?—Yes.

What place?—East Broadway; I do not know the number of the house.

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And from whom did you receive the information to go there?—Through Colonel Kelly from John Hogan.

The CHIEF BARON. Hogan conveyed it to you from Kelly?—Yes.

At what place did you say? Did you say you don't know the particular place?—In East Broadway, New York.

You don't know the exact place, therefore?—No, sir.

The SOLICITOR GENERAL. To do what? What were you to do there?—To meet others.

Do you mean in connection with the expedition?—Yes.

Upon what day, do you remember?—What was the day you were so told to attend?—The 12th day of April.

In the present year?—Yes.

Was anything more told you as to what would happen when you met there?—No, sir.

Were you told what you were to do when you went there?—I was told to follow the others.

To any particular place, was it?—To the foot of Canal street, in New York.

And were you told what was to be done there?—No, sir.

Or where you were to go?—I had no intimation at that time.

Did you go to the place?—Yes.

The CHIEF BARON. What place did you go to?—The foot of Canal street.

The SOLICITOR GENERAL. And did you meet any parties there?—I did, sir.

About how many?—Only those whom I had already met, with whom I had parted in Broadway, going in ones, twos, and threes—going so as not to excite suspicion.

The CHIEF BARON. Coming in ones, twos, and threes?—Yes.

The SOLICITOR GENERAL. But had you in fact attended at East Broadway before you went down to this place in Canal street?—Yes.

Had you met any persons at East Broadway?—How many persons had I met?

Have you met persons at Broadway?—Yes.

About how many?—Over forty, I should say.

Was anything communicated to you at East Broadway before you went down to Canal

street as to what you were to do at Canal street?—Nothing whatever, except to follow the others.

Had you any baggage with you?—None, sir.

Or any of the parties that you saw?—Some had baggage.

The CHIEF BARON. Some of the party you met?—Yes.

About how many had baggage?—Some two or three that I had seen, sir.

The SOLICITOR GENERAL. What do you call baggage, which you say two or three had?—Valises.

Does this Canal street that you speak of open on the river?—Yes, sir.

And what did you and the others of the party do when you got to the foot of Canal street?—Went on board a steamer.

Was that steamer waiting for you? Was it there ready for you?—No, sir; we were waiting for it, as I understood.

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And it came up?—Yes.

And did you all go together?—I should think we all went together on board that steamer.

And did the steamer leave the quay then?—Yes.

And where did she go to?—She went to the outer bay of New York.

About how far is the distance from the quay to what you call the outer bay of New York?—Some fifteen or twenty miles.

And is that the roadstead of New York you went to?—It is the outer anchorage.

How long did you remain at that outer anchorage?—From some time in the afternoon of the 12th of April to the afternoon of the 13th of April.

And during that time did you all remain on board the steamer?—Yes.

What did you do on the afternoon of the 13th? What occurred then?—The vessel not making her appearance, we cast loose from a buoy to which the steamer was anchored, with the intention of returning.

The CHIEF BARON. What cast loose?—The steamer.

The SOLICITOR GENERAL. What vessel did you refer to?—I did not know at that time what kind of a vessel it was.

But had a vessel been spoken of?—Yes.

By whom?—By James Kelly and John Hogan the vessel had been spoken of.

What had they said about it?—They did not tell me of what size it was, whether it was brig or ship.

What did they say about this vessel, or a vessel?—This vessel was to convey arms.

The CHIEF BARON. They said so?—Yes.

The SOLICITOR GENERAL. You say the vessel not appearing, you cast loose from the buoy. What happened then?—We cast loose with the intention of going back to New York.

Well, what happened then?—Meeting a vessel, two-masted, on the way, we steamed close to her, and jumped aboard of her.

What was the name of that vessel?—The Jackmel packet.

Did the whole party that had come down to the steamer get on board the Jackmel packet?—Yes, sir.

About how far had you proceeded from the moorings that you had cast loose from before you met that Jackmel packet?—Some two miles or three.

Had she a crew on board independent of your forty men, or the number you speak of?—Yes.

And a captain?—Yes.

And did she sail on your going on board?—No, sir; not immediately.

And about how long did she remain?—Some two or three or four hours afterwards.

Now, you say, that was a brig or two-masted vessel?—Yes.

Do you know about what tonnage that vessel was?—Yes.

Of what tonnage was that vessel?—One hundred and fifteen tons registered, as I understood.

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The CHIEF BARON. How do you know that?—I heard Captain John F. Kavanagh state that.

The SOLICITOR GENERAL. And was she well found in sails and appliances for a vessel of her class?—Not very well.

About how many of a crew had she?—She had four sailors.

A cook?—A cook and boy.

The CHIEF BARON. Besides the captain?—And two officers.

The SOLICITOR GENERAL. A captain and two officers—a mate and another?—Yes.

The CHIEF BARON.—Two officers besides the captain?—Yes.

Was one of the officers a mate?—One of them was a mate.

The SOLICITOR GENERAL. What track did you take when you set sail from the roadstead of New York?—I learned from Captain John F. Kavanagh that we took the track usually pursued by West Indians.

Did Kavanagh tell you why that track was taken?—Yes.

Why?—If pursued, he supposed they would pursue him in the European track, and consequently he would avoid being captured.

And in consequence he took the West India track?—Yes.

Now, had you any colors flying when you sailed?—I don't recollect seeing any when we sailed.

Were any colors hoisted occasionally during your voyage?—Yes, the English colors were hoisted on different occasions.

Was that when you met vessels?—When we desired hailing any vessel.

The CHIEF BARON. What did you hail the vessels for?—Sometimes we did not know where we were—what particular part of the ocean we were in.

The SOLICITOR GENERAL. Can you tell how long the West India track was pursued?—Until the afternoon of the next day.

The afternoon of the 14th?—Yes.

And was the course changed then?—Yes.

The CHIEF BARON. What time in the second day?—In the afternoon. The course was then changed more to the south of the general European track.

The general European track?—The track pursued by European vessels.

The SOLICITOR GENERAL. Was that track continued?—Yes, generally.

You stated Kavanagh was the captain. Was there any person in command of the expedition—I don't speak of the sailors or the ship itself?—There was.

And what was his name?—General James E. Kerrigan.

Do you know whether James E. Kerrigan had been a general in the United States army?—No, sir.

And what had he been?—He had been a colonel for a time in the army.

Had you known him before you sailed, or was the first acquaintance you made of him on board?—I knew him before sailing.

Was it as an officer you knew him, or how?—I knew him as a congressman of the United States.

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Had he been a congressman of the United States?—Yes, sir.

Had you known him in connection with this expedition until you got on board?—No, sir.

Had he been in the northern army?—Yes, sir.

Had you obtained any commission in this expedition, either in New York or on board?—I received a commission in both places.

In New York, from whom?—From Colonel Kelly, or through Colonel Kelly.

And on board, from whom?—General James E. Kerrigan.

Have you these commissions, or what did you do with them?—I threw one of them away before coming ashore, and the other I did not bring with me.

That is the New York one, I suppose?—Yes.

The one you got on board you threw away before landing in Ireland?—Yes, sir.

What was the rank you were appointed to by these commissions in the expedition?—Captain.

Now, you have stated that Kerrigan was the general?—Yes.

Were there any other officers of high rank in the expedition?—There were some colonels. I want you to tell me carefully the names of those you recollect, according to their rank. Who were the colonels?—Colonel Nagle, Colonel Warren.

Is that the prisoner at the bar?—That is the prisoner.

Well, any other colonels?—Colonel Phelan, Colonel Prendergast, or Pindergast, I don't know which of the two; Colonel Tressilian, Colonel Deven, Colonel Doherty.

Are these the names of all the colonels you recollect?—That is all.

Were there any captains as well as yourself?—Yes.

Will you tell me the names of as many of the captains as you recollect?—Captain Costelloe, Captain Greene, Captain Buckley, *alias* Murray, Captain Fitzsimons, Captain Kane, Captain Leonard. I do not recollect any more captains.

Were there any lieutenants?—Yes.

Tell me the names of any lieutenants.—Fitzgibbon, Roche, and William C. Nugent; I do not recollect any more.

Were there any privates or any ordinary men?—There were understood to be none; they were all expected to have commissions.

All captains?—Yes.

Tell me did you know any of the others, or any of the crew?—James Lawless, one of the crew, Cade, (his right name is Murray,) L. Doyle, Daniel Lee, Thomas Fruen, Patrick Nugent, James Coffey, or Nolan; I cannot recollect any more names.

There were others, but you do not recollect their names?—There were others.

Can you tell what day was it you got the commission after you sailed—about how long after you had sailed?—Not more than an hour after getting on board the vessel.

The CHIEF BARON. After getting on board the brig?—Yes, the brig.

The SOLICITOR GENERAL. When the commission was so given to you shortly after

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getting on board the brig, did you see commissions given by Kerrigan to any other of the parties?—I did, sir.

Was it to all the others of the party, or to a great number?—To a great number of them.

Did you see the prisoner Colonel Warren getting his commission?—No, sir, I did not.

The CHIEF BARON. Did you see commissions given to any of the colonels?—No, sir.

The SOLICITOR GENERAL. Did you to the captains?—Yes, sir.

Was that commission you spoke of—your commission—signed by Kerrigan?—No, sir.

Who was it signed by?—Colonel J. E. Kelly.

And do you remember what its contents were, as well as you recollect?

The CHIEF BARON. Signed by whom?—Colonel J. E. Kelly, and also by Captain Hogan.

The SOLICITOR GENERAL. Can you state what the contents of it were as well as you recollect?—“To all whom it may concern, greeting. We, by these presents, do appoint (by name and rank) in the army of the Fenian Brotherhood.” I do not recollect any more.

Then in your commission your name was in, and your rank?—Yes.

Was it in print or ink?—In print.

On parchment or paper?—On paper.

The CHIEF BARON. These commissions were signed by Colonel James Kelly?—Yes.

The SOLICITOR GENERAL. Now did anything particular happen after you sailed? Do you remember Easter Sunday?—I do.

Did anything happen worth mentioning before that?—I would say not.

And if anything did happen worth mentioning you would remember it. Nothing happened till Easter Sunday. Will you state what did happen on Easter Sunday?—The green flag with a sunburst was hoisted some time before noon. I do not know the hour exactly. At its hoisting there was a salute of different arms fired, after which the orders delivered to John F. Kavanagh in New York, commanding him to land the arms in Ireland, were read.

Read by whom?—By John F. Kavanagh.

By Kavanagh himself?—Yes.

And did he read any signature to that order?—Yes.

What signature?—The signature of Captain Powell, the chief of the navy; also the signature of Colonel James Kelly; it read so.

Did it say where in Ireland they were to be landed?—If possible, at Sligo. Or if not found practicable they were to be landed somewhere on the coast of Ireland.

Was anything done about the name of the vessel that day?—Yes.

What?—She was newly christened.

By whom, and in what name? She was christened the “Erin’s Hope,” by John F. Kavanagh.

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Were the officers, the colonels, and others present when that order was read, and when the christening took place?—Yes, sir.

Were they collected for that purpose?—Yes.

On the quarter-deck, I suppose?—On the quarter-deck.

Was Warren there?—Yes.

The CHIEF BARON. Warren, you say, was there at both these transactions—at the reading of the sailing orders and the change of the name?—Yes.

The SOLICITOR GENERAL. Had you arms on board?—Yes.

Of what kind and what number?—Of different kinds.

When you say different kinds, can you say what different kinds?—We had some Spencer repeating rifles; seven-shooters.

What other kinds of arms?—We had some Enfield rifles; some Austrian rifles; we had some Sharpe breach-loading rifles; we had some Burnside breach-loading rifles also; these are the larger arms.

What small arms had you?—We had some revolvers.

How were the arms kept?—They were packed in boxes—large-size boxes.

What was on the box, did you observe?—They were Spanish names; I do not recollect what they represented.

Were they labelled as arms?—Oh, no; they were not labelled at all.

What size boxes were they packed in?—They were packed in boxes within one another.

Where in the vessel were the boxes kept?—Between decks.

Was the vessel nearly laden to her full complement with arms? You said she was 150 tons register; was she deep in the water, or what?—She was reasonably deep in the water.

Had she any cargo on board but arms, to your knowledge?—She had no other cargo than arms.

Had you ammunition as well as the arms, or was it all the description of arms you spoke of?—We had some ammunition.

Do you mean cartridges, or what?—No; we had fixed ammunition.

What do you call fixed ammunition?—Already put up.

Made in cartridges?—Yes.

Was it in boxes?—No; it was scattered; it was not carefully packed; it was in a box having no lid, that I saw.

About what quantity was there of ammunition in this box that you speak of?—It was supposed to be over a million and a half of rounds of ammunition.

Do you know, as a matter of fact, about how many stand of arms were on board, or can you give us any more description about that vessel?—I should judge there were some 5,000 stand of arms on board; not less.

Were there any pieces of artillery on board?—There were some representing such.

How many?—Three pieces.

Were they fired at all?—Yes.

When?—On the occasion of hoisting the flag once.

What size were they?—They threw some three pounds shot or shell.

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The CHIEF BARON. Do you know the difference between a gun of that kind for a ship and a gun for use on land?—Yes.

Was this a ship gun?—No, sir.

What sort of carriages had they?—They had none.

The SOLICITOR GENERAL. Were the arms opened at all? I mean the cases in which they were during the voyage—the larger cases?—Yes, sir.

What was done with the arms when the cases were opened?—They were so placed as to be ready to distribute.

How were they placed? Were they repacked in any way?—They were placed so that they could be taken up in ones, twos, or threes, but still left in the boxes.

The CHIEF BARON. They were not taken out of the boxes?—Yes, sir, they were.

I thought you said they were left in the boxes?—They were rearranged in the boxes.

In the same boxes?—Yes, sir.

The SOLICITOR GENERAL. Was it stated for what purpose the arms were to be landed in Ireland?—Yes, sir.

For what purpose?—To arm a revolutionary party.

Who stated that?—James Kelly, John Hogan, and a good many others in connection with the movement whose names I do not know.

Where was that stated?—In New York.

Was the James Kelly who made that statement the same person as you have described as “Colonel” Kelly?—Yes.

The CHIEF BARON. Who else besides Kelly made the statement?—John Hogan.

And others whose names you don’t remember?—Yes, my lord.

The SOLICITOR GENERAL. Had you known Warren, the prisoner, before you met him on board the brig?—I do not recollect ever seeing him.

Was there any discussion on board about the arms—as to the landing of them?—None about the arms.

Was there any discussion as to the purpose for which they were to be used when landed?—Yes.

Had you a conversation with any one about it; and, if so, mention his name?—It was a general conversation, indulged in by all.

What was the conversation?—That those arms were to be given into the hands of men who, according to the representations made in New York, were to be at Sligo.

To do what with the arms?—To receive those arms.

But for what purpose?—For the purpose of revolutionizing.

The CHIEF BARON. Was the purpose stated, and, if so, what was it?—For revolutionizing the province of Connaught.

The SOLICITOR GENERAL. Before I take you further, I wish to ask you, had you sailing orders when you left New York?—Sailing orders, sir?

Yes. Had you sailing orders on board the ship—the ordinary clearance certificates or papers?—No, sir, we had not.

Was anything said about that?—Yes.

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By whom?—By Prendergast.

Was that the Colonel Prendergast whom you already spoke of?—Yes.

What did he say?—He was dissatisfied at sailing in a vessel that had no clearance papers.

The CHIEF BARON. Did Prendergast state that? Did he say he was dissatisfied?—Yes, sir.

The SOLICITOR GENERAL. To whom did he say that?—To Colonel James E. Kerrigan, and the other colonels.

Was Prendergast the only one who expressed dissatisfaction?—No, sir. It was very near creating a mutiny in the expedition.

Was that dispute afterwards adjusted?—Yes, sir; Prendergast had his commission taken from him on that account.

By whom?—By General Kerrigan, but it was afterwards returned to him.

About how long was it kept from him?—Some two or three weeks I think.

About what time did you sight land on the Irish side?—Some time in May—between the 15th and 20th of May, as near as I can recollect.

What point of the Irish coast did you first sight land at?—I do not know what point.

Was any one taken on board when you approached the land?—Yes, sir.

What was he?—A pilot.

Do you happen to know his name?—I do, sir; it was Gallagher.

Did he come out to the vessel, or did you pick him up?—He came out; he seemed to be following us from early morning. He followed the ship from early morning until some time before twelve o'clock, when we took him up.

How far from the shore was the ship then?—Some two miles; not further.

You were quite in sight of land, I suppose?—Oh, yes.

Besides the pilot Gallagher, did any other person come on board?—Within the bay of Sligo a person did come on board.

The CHIEF BARON. Was it in the bay of Sligo Gallagher came on board?—I should think not. I have no information otherwise of it, but I think it was in the Bay of Donegal he came on board.

But in the Bay of Sligo another person did come on board?—Yes.

The SOLICITOR GENERAL. Who received that other person when he came on board?—Captain John A. Kavanagh.

Where did that person go when he came on board?—He went on the quarter deck for a few seconds with Kavanagh, and then went down to the cabin.

Who went down to the cabin with him?—I saw no one but Kavanagh go down with him; but the colonels were already in the cabin before him.

Was Kerrigan in the cabin?—He was.

The officers of inferior rank—were they in the cabin?—No, sir.

Were you there?—No, sir.

Do you happen to know what that person's name was who so came on board, and went

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down into the cabin with Kavanagh?—I heard his name was Burke.

The CHIEF BARON. From whom did you hear that?—From a man named Costello.

The SOLICITOR GENERAL. Was that "Captain" Costello?—Yes, sir.

How long did that person remain on board?—Not longer than an hour, I should think.

About what hour of the day or evening do you remember did Burke come on board?—After dusk at night.

The CHIEF BARON. Was that the night of the day on which the pilot came on board?—I think it was.

The SOLICITOR GENERAL. You say he remained on board about an hour?—Yes.

Did he go on shore?—Yes.

Did any of the party go with him?—Yes; three colonels.

Do you know their names?—Colonel Devan, Colonel Phelan, and Colonel Prendergast.

About how far was the vessel from land when that party went on shore?—The vessel was very close to the land.

She was inside the bay?—Yes.

Had any of the party landed before this time that Burke, with Prendergast and the other two colonels, went on shore?—Yes; two of them.

On what day?—On the same day.

Who were they?—Colonel Doherty and a man named Shea.

The CHIEF BARON. Where did they go?—They went to Sligo very early in the evening.

Was that the same day the pilot came on board?—Yes.

The SOLICITOR GENERAL. How long after those two men that you speak of, who left early in the evening, had landed, did Burke come on board?—About an hour and a half.

Was Gallagher, the pilot, taken down to the cabin at any time during that day?—Immediately on coming on board the vessel he was.

By whom?—By John A. Kavanagh.

Did you hear anything said to Gallagher?—I did.

By whom?—By Kavanagh.

The CHIEF BARON. Did you go down with him?—No, sir.

The SOLICITOR GENERAL. How far were you off when you heard this?—A little over three feet.

Where was it said?—Between decks.

What was it you heard?—I had better first state how I heard it. There was a door communicating with the cabin from that part of the vessel in which I was, and at this door I was standing when this man, Gallagher, went into the cabin with Kavanagh.

The CHIEF BARON. Was the cabin between decks?—Part of the cabin was raised higher than the deck.

Was the door at which you were standing on a level with the cabin floor?—Yes.

The SOLICITOR GENERAL. Were any of the officers in the cabin at that time, and if so, tell me who?—The colonels were in the cabin.

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Was the prisoner there?—Yes.

Was Nagle there?—Yes.

The CHIEF BARON. Did you see the prisoner there?—He could not help but be there; he was nowhere else in the ship.

But did you see them there?—I heard them conversing there; I did not see them there.

The SOLICITOR GENERAL. What did you hear said to the pilot?—I heard only part of the conversation between the pilot and Kavanagh.

State what that was?—It was in excuse for not taking a Fenian oath.

An excuse by whom?—By Gallagher, the pilot.

What was the excuse?—That he was too old; that was all I could gather. I afterwards heard the pilot take the oath.

The CHIEF BARON. Was he still in the cabin when he took the oath?—Yes; it was administered to him by Colonel Nagle.

The SOLICITOR GENERAL. Can you state what the oath was that you heard the pilot take?—That he would not divulge what the cargo consisted of.

Did the pilot afterwards come on deck?—Shortly after.

Did you hear anything else said, either in the cabin or out of it?—No.

Did the two men, Doherty and Shea, who went on shore, come back on board?—No, sir.

They did not return?—No, sir.

Did Colonel Prendergast and the others who went on shore with the man whom you call Burke return?—No, sir.

Do you remember anything happening about discharging a pistol at any time?—I do, sir; it went off accidentally.

When was it?—It happened on the same day the Fenian agent, Burke, came on board.

In whose hand was the pistol that so went off?—In mine.

What were you doing with it?—I was cleaning it.

Where were you at the time?—In the ship's hold.

How did it go off?—It went off accidentally.

Was it loaded?—It was.

Was any one hurt?—Yes, two men were hurt; one was a man named Coffey, otherwise Nolan; the other man's name was John Connor.

Were the men much hurt?—One of them was very badly hurt.

Which of the two was that?—John Connor.

Has Connor any other name?—I don't know him by any other name.

Whereabouts was he wounded?—In the ankle.

Where was Nolan hit?—Somewhere in the fleshy part of the leg near the knee.

Were those men afterwards put on shore?—Yes.

Did any of the party go with them?—Yes, a man named Nugent went with them.

Was he the same Nugent you already spoke of when giving the list of names?—No, sir; this was Patrick Nugent.

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Didn't you mention Patrick Nugent as one of the men of inferior rank?—No, sir; I mentioned Colonel Nugent—a different person.

The CHIEF BARON. What was Patrick Nugent?—I don't know that he had any rank.

The SOLICITOR GENERAL. Did any one else go ashore with the wounded men?—The pilot, Gallagher, left in the same boat with the three men.

During the night?—Yes.

During this time that you were in Sligo bay were you close to shore at any time?—Very close; at one time I could almost throw a stone from the ship to land.

About how far from the shore were you when the boat left the ship to take the wounded men on shore?—I could not say the exact distance.

It was night, I suppose?—It was.

Did anything occur next day?—A council was held.

Where was it held—was it on deck?—No; in the cabin.

Were you present?—I was.

The CHIEF BARON. Was this still while you were in Sligo bay?—I don't know exactly whether it was in the bay. I don't know how large the bay is.

The SOLICITOR GENERAL. Were you in sight of land at the time?—Yes.

Were all the officers present at the council, according to your recollection?—Yes.

Was the vessel under sail or stationary at the time?—She was under sail, sir.

Was anything communicated—and if so, by whom—to that council?—Yes; by General Kerrigan.

What was communicated?—The information derived from the agent, Burke.

What did he tell you?—He told us that it was impossible, or rather that it would be foolish, to attack the town of Sligo.

Anything more?—That the Fenian Brotherhood was quiet, but firm; that they had been put down lately.

Anything further?—I should state, with reference to the statement that it was useless to attack the town of Sligo, that that had been determined on previous to the agent coming on board.

What had you determined on before the agent came on board?—To attack the town of Sligo.

Was it at a council that was determined?—Yes.

Was Warren the prisoner present at that?—Yes.

You say that General Kerrigan told you you could not take the town of Sligo?—Yes, that Burke had told him so.

Was anything said as to what you had to do?—Nothing more than that the agent had ordered Captain Kavanagh to sail for Cork.

Was the prisoner Warren present at that council?—Yes.

Did the vessel set sail then?—She did, sir.

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The CHIEF BARON. When was the council held at which it was determined to attack the town of Sligo?—It was held before the agent came on board.

When—how long before?—I could not tell the exact time.

Was it on the same day?—It was held in the absence of any information.

I know. But how long was it before the Fenian agent came on board? Was it the same day, the day before, or a week before?—No; it was on the same day.

Where were you at that time?—I should think in Sligo bay, somewhere.

The SOLICITOR GENERAL. Was the pilot on board at that time?—I do not know whether he was or not; I could not say for certain.

The CHIEF BARON. What part of the vessel was that council held in?—In the cabin.

Who were at it?—All the officers were at it, sir.

Any one else?—None, sir.

The SOLICITOR GENERAL. You put to sea, you say, in consequence of the determination of the council on the information given by Burke. Do you remember on what day afterwards you came in sight of land again?—I do not remember.

Do you know what part of the coast you first sighted?—I was told we remained all day becalmed not far from a place called Baltimore, in the county of Cork.

Was there a council held on that day?—No, sir; but there was before arriving.

Were you present at that council yourself?—Yes.

Who besides you were present?—All, except the crew and General Kerrigan and Colonel Warren.

Where were Kerrigan and Warren? Why were they not at it?—They did not acquiesce in the summoning of any such conference.

Was the result of that counsel afterwards communicated to Warren?—It was, sir.

What was determined at that council?—To put the ship in the direction of the Western islands; I think the Azores. I do not know exactly what is referred to as the Western islands; to put the ship in that direction so as to reprovision her, and then to return to New York.

Do you happen to know what amount of provisions you had on board at the time that council was held?—Yes.

Were the provisions short, or were they abundant?—They were short.

The CHIEF BARON. How do you know that?—By the second officer communicating the fact to the council after an investigation made by him.

You mean the mate?—Yes.

Was the captain present?—You mean Captain Kavanagh? He was not; he had nothing to do with it.

The SOLICITOR GENERAL. Were there any notes of the proceedings of the council taken at the time in your presence?—There were.

By whom?—Colonel Nagle was one of those who took them.

Did you see Colonel Nagle taking notes?—I did.

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The CHIEF BARON. Were notes taken by any one else?—Yes, by Captain Costello.

Did any one else take them?—I did myself.

The SOLICITOR GENERAL. What did you do with the notes you took?—I threw them all away.

Before you came on shore?—Yes.

Was there any division at that council, or was it unanimous; was a vote taken?—Yes.

What question was put?—That as the object for which the expedition had been taken up was a failure it would be better to return to New York, and to lay before the Irish there the experience they had gained, rather than run the risk of landing in Ireland in their straitened condition.

Did they say what was to be done in the United States when they went there?—Yes; they were to lay before the Irish the experience they had gained during their connection with the expedition. To this Captain Kavanagh agreed.

The CHIEF BARON. I thought you said he was not present?—He agreed to abide by the decision of the council.

The SOLICITOR GENERAL. Do you mean that that was the resolution which was come to by the council?—Yes.

And was that resolution communicated to Kavanagh?—It was, sir. I was the individual who communicated it to him.

Where did you communicate it to him?—On the fore-castle. No; I beg to correct that statement. I should have said the after part of the vessel, not the fore-castle.

The SOLICITOR GENERAL. Was Kavanagh satisfied with that resolution: was he willing to abide by it?—Yes, sir, he was at first. After the vote was taken it was decided, by twenty-two for to ten against, that they should return to the United States.

Was that vote of the council taken in the cabin before Kavanagh was informed of the result?—Not in the cabin; it was taken on the quarter-deck.

Was he present?—He had nothing to do with it.

But was he present?—He was present on board the ship.

The CHIEF BARON. I thought you said the council took place in the cabin?—This council; I beg your lordship's pardon, I did not.

The SOLICITOR GENERAL. The council at which it was determined to give up the expedition and go back to America, and lay the experience they had gained before the Irish people; did it take place on deck?—It took place on the after part of the vessel.

That is what you call the quarter-deck?—Yes.

Was that the vote you communicated to Kavanagh?—Yes.

Was that resolution carried out, or was it changed?—It was changed.

How?—Immediately on my presenting Kavanagh with the document exonerating him from blame or connection with that council which had been gotten up for the purpose of changing the orders received by him in New York, he turned round and asked if they would not land anywhere he could land. It was then agreed that they would land anywhere he chose.

The CHIEF BARON. Was anybody else with Kavanagh when he said that?—Yes, sir, all were present on the quarter-deck.

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Were all present when you communicated to him the result, and when he made that proposition which they agreed to?—Yes.

The SOLICITOR GENERAL. I understood you to say that Nagle and Warren did not attend that council which came to the resolution you have mentioned?—Yes.

But that the result was afterwards communicated to them?—Yes.

Was that at the same time?—Yes; at the same time.

Where was it communicated to them?—Nagle remained in the cabin, and it was communicated to him there. Colonel Warren came up, and he was informed of it on deck.

You say the colonels were present at that council?—All the party were present except General Kerrigan and Colonel Warren.

Where were they at the time the council was proceeding?—They were in the cabin.

Where were they at the time the communication was made to Kavanagh?—Kerrigan was in the cabin; Warren was on deck, and so were all the others.

And was the first intimation Warren got of the decision the council had arrived at, what you communicated in his hearing to Kavanagh?—No, sir; I had communicated with him previous to the council sitting.

Communicated what?—That such a thing would take place.

When you first communicated to Warren as to what would be likely to occur at the council, did Warren agree or dissent?—He dissented.

When you subsequently communicated to Kavanagh in his presence the result of the council, did he still dissent or agree?—He assented after the council was held, and when the decision was presented to him for his signature.

Was the decision drawn up in writing?—Yes, and Warren signed it.

The CHIEF BARON. Then he assented to what the council had determined?—Yes.

The SOLICITOR GENERAL. You said something about the prisoner's signing a document?—Yes; the resolution came to at the council. I presented it to him myself for his signature.

Did he sign it?—Yes, sir.

What became of it?—It is in the possession of Captain John F. Kavanagh, of New York.

The CHIEF BARON. Was it before you communicated the result to Kavanagh you presented the document for signature to Warren?—I communicated it at the same time to Kavanagh that I did to Warren, both being present at the time.

And in Kavanagh's presence you asked Warren to sign it?—Yes, and he did so.

Was it before or after you had obtained the signature of Warren that Kavanagh proposed you should give up the resolution?—Afterwards.

Did you, in fact, land upon the Irish coast afterwards?—Yes.

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What part did Warren take, or did he take any part, about that proposal of Kavanagh?—He was very well satisfied with it, sir.

To rescind the resolution he had previously signed?—Yes.

The SOLICITOR GENERAL. Did you, in point of fact, land in Ireland?—Yes.

How long after Kavanagh induced you to change the resolution did you see land?—Two or three days after.

Did you cruise about?—We did not do a great deal of sailing, because there was one day calm, or the greater part of it was calm.

Do you know on what part of the coast you did land?—At the time I did not, sir.

Can you tell me how you landed?—We landed in a fishing boat.

The CHIEF BARON. Do you now know on what part of the coast you landed?—Yes, sir; very nigh to Dungarvan.

Do you know what day of the month it was?—Yes; the 1st of June.

The SOLICITOR GENERAL. Can you tell me about what hour of the day it was you landed?—Some time in the forenoon, sir.

How many men landed with you?—Some thirty odd people.

Was it all in the same fishing smack?—All in the same fishing smack, sir.

About how many of a crew were there in the smack when she came alongside?—I could not tell how many.

Did you see more than one man?—Oh yes, sir; there were several men.

How far from the shore was it you got on board the smack?—Some three or four miles.

Did the smack land at any harbor; did she beach herself, or how did you get on shore?—She beached herself.

Were there houses near where you landed?—Yes; there were houses right opposite to where we landed.

How did you get out?—We jumped out into the water.

About how deep was the water?—It was over me when I got out, I being the last man. I was the last that got out.

When the other men got out how deep was it?—With some of them it was beyond their hips.

Do you know how you came to be last, or was it accidental?—It was accidental.

What did you do when you landed?—I simply walked along the road.

Was Warren with you when you were walking, or did he go any other way?—No, sir, he was not with me.

Did you observe did he go away with any one?—I did not see him after landing.

With whom did you go?—With a man named Costello.

Were there any other persons, whose names you can tell me, of your party?—The only other man with me was James Lawless.

What happened to you after you landed?—About two hours after being on shore I was arrested.

By whom?—By a policeman. There were two magistrates present at the time.

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Do you mean present on the road?—Yes; they were in a vehicle, a car.

Turn round and tell me if you see either of these gentlemen?—I recognize one of them. Mr. Redmond; the other gentleman was Mr. Fitzgerald, I think.

What did the magistrates do; were you taken into custody?—I was immediately handcuffed and taken to a place called Kiely's Cross barracks, I think.

And eventually where were you brought?—To Mount Joy prison.

Before that were you taken anywhere?—Yes, to Dungarvan.

Was the Costello who was the captain in the expedition the same Costello you mentioned at the beginning as having introduced you to James E. Kelly?—No, sir; a different person.

[The solicitor general here requested that five other prisoners, who were in custody, should be placed at the bar for the purpose of being identified. The prisoners, Patrick Nugent, James Coffey alias Nolan, Colonel Nagle, Captain Costello, and Lieutenant Fitz Gibbon, were accordingly placed at the bar.]

Do you see those five men?—I do, sir.

Do you know them?—I do, sir.

Name them. [A wand was then handed to witness, with which he pointed out each individual.]—This is Colonel Nagle, Captain Costello, Lieutenant Fitz Gibbon, Patrick Nugent, James Coffey alias Nolan; the first man here (indicating the prisoner on trial) is Colonel Warren.

The CHIEF BARON. Is that Patrick Nugent the same person who came on shore with the wounded people?—Yes, sir.

The SOLICITOR GENERAL. As to the other persons who landed, have you since seen them all in prison?—Not all of them.

How many of them did you see?—All but five.

The SOLICITOR GENERAL. I have no further questions to ask this witness.

The CHIEF BARON. I wish to ask the witness some questions, but perhaps it will be better to postpone doing so until some of the other evidence has been given.

The SOLICITOR GENERAL. Very well, my lord.

The CHIEF BARON. Prisoner, do you wish to put any questions to the witness?

PRISONER. I do not recognize the jurisdiction of this court at all.

The CHIEF BARON. Do you suggest to me any question to ask for you?

PRISONER. No, sir.

MICHAEL GALLAGHER, examined by Sergeant BARRY :

You live in Towney, in the county of Donegal?—Yes.

What are you?—A pilot.

Have you been long a pilot?—I have been a pilot for twenty-five years.

Where were you in May last?—I was at home.

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Do you recollect one night in May last seeing a brigantine?—I do.

Where did you see her?—I seen her coming to Sligo bay.

What o'clock was it when you saw her?—I suppose it was about six o'clock.

Was it in the morning or the evening? It was in the evening.

Where were you at the time you saw her?—I was on my lookout.

On shore?—On shore.

What did you do when you saw her?—Well, I went home.

Did you go on board her?—Not on that evening.

Up to what hour did you see her?—Up to about six o'clock.

Not later?—No.

When did you see her again?—I saw her next morning, about eight o'clock in the morning.

What day of the week was that, do you recollect?—It was on a Friday.

Where was she at that time?—She was reaching out from Sligo bay, coming across to our land, with the wind to the eastward.

What do you call your land?—The Donegal side, the northern land.

Was she near the shore at that time?—I suppose she was about a half a mile across the bay.

The CHIEF BARON. How far from the shore was she?—When we first saw her she was within four miles off the Connaught coast, as we call it; she had to tack for our land with the wind to the eastward, and the time we boarded her she was about six miles off our land.

Sergeant BARRY. When you saw her the last time, did you board her?—Yes.

In a boat, was it?—Yes; in a small fishing boat, less than two tons.

The CHIEF BARON. Where were you when you saw her the second time?—We saw her when we were on the lookout.

Were you on the land?—On land.

But on the lookout?—On the lookout.

What time was that?—As near as I can guess, it was about twelve o'clock in the afternoon.

Sergeant BARRY. Who went with you on board her?—I had six men along with me; five men and a boy.

Who were they?—James Browne, John Byrne, Patrick McGehan, Patrick Gallagher, Patrick Byrne, and John Hanghey.

The CHIEF BARON. Was that all?—Yes; that's six.

Sergeant BARRY. You say this was about twelve o'clock when you boarded her?—It was, as near as I can go to it.

Where was the vessel when you boarded her?—She was about seven miles from land; she was then between Ennisduff and Innismurry island, in Donegal bay.

When you come alongside of her, what happened?—When I came alongside, between the

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two masts, I went on board the vessel, and walked to the quarter-deck. The man in charge was on the quarter-deck, and I asked him where he was from, and where he was bound for. He told me he was from Spain, and bound for Glasgow, with a light cargo of fruit. He told me he landed his captain on Thursday evening, for provisions for the ship, in Sligo bay. He asked me was I pilot; I told him I was. He asked me what I would charge for going across the bay with him to get his captain on Friday evening at six o'clock. I told him two guineas. He agreed for the two guineas, and he gave me charge of the vessel.

Did you then take charge of the vessel?—Yes; I went as the pilot of her then. After that, when we had settled everything about the pilotage, he went down into the cabin, and called myself down. I didn't know whether he was the captain or mate.

The CHIEF BARON. But he called you down?—He called me down.

Into the cabin?—Yes.

Sergeant BARRY. What occurred then?—When I went down there were some men in the cabin; they asked me if I was a Fenian.

How many men were in the cabin?—I am on my oath, and I can't say how many men there were; there were more than these two men.

Turn round now, and see if you see any one here who was present on that occasion.—Yes; this man (pointing to the prisoner) was.

Did you know his name, then?—No.

Did you afterwards know his name when you were in the vessel?—No.

But that man was there?—He was in the cabin.

You spoke of two men, what were they doing?—They were in the cabin when I went down.

Would you know the other of the two men?—I would.

What occurred, then, between you and the two men in the cabin?—He asked me was I a Fenian, and I told him I wasn't.

Who asked you that?—It was not that man (the prisoner;) it was the other man. He asked me if there were any Fenians in our county; I said I didn't think there were any Fenians in the county Donegal. The man in charge then said, "Swear him." I told him for God's sake not to swear me, as it didn't answer me, and as I was a man of age, and had a large family.

What occurred then?—Stating what family I had, I told them that I had my mother, wife, and seven of a weak family, and not to make me swear. The man in charge came back of me then, with a loaded pistol: I took notice of him, when I was going down to the cabin, to take it off some place in the cabin. He told me to take the book, or, if I wouldn't, he

would soon let me know how to take it, and let me see what he would do. I had to take the book and swear; whatever words he said I had to say after him.

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Who was it said the words to you?—It is not this man (the prisoner;) it is that man there (pointing to another prisoner named Nagle, who had been brought into the dock.)

The other man in the dock?—Yes; it was he handed me the book.

The CHIEF BARON. That man was identified as Nagle?

Sergeant BARRY. Yes, my lord.

The CHIEF BARON. Was he the person that said if you didn't swear he would let you see what he would do?—No, it was the man in charge of the ship said that.

What did Nagle say?—He only handed me the book, and whatever he mentioned I had to repeat after him.

You had to say whatever he said?—Yes; I got afraid.

Sergeant BARRY. Do you remember what he said to you, or the substance of the words?—I do; some of it. I had to say, "Not to tell any one on shore that I saw them in the cabin; or if I would take notice of anything in the ship or of them, not to report it on shore."

The CHIEF BARON. Was it that you were not to report it if you took notice of anything that was on board the ship, or anything they were doing?—They said if I saw them do anything, or if I saw them in the cabin of the vessel.

Sergeant BARRY. Do you remember anything more they said?—Yes; "Not to give a description of the ship, or to say what size she was."

Do you remember anything more?—I do.

Did they say anything more to you in the cabin at that time; do you remember anything more of the oath?

The CHIEF BARON. Anything else you were not to tell?—I don't remember.

Sergeant BARRY. Did you take the oath, and did you kiss the book?—I had to do it.

Did anything more occur in the cabin at that time?—I don't think there did, only one thing, when I said the family was weak, and if I went in the vessel they might die, one of the two men gave me money; I don't know whether it was five shillings he gave me.

Did you then go on deck?—I then went on deck.

The CHIEF BARON. What do you mean by saying "if you were going in the vessel?"—I didn't know but that they would take me away.

Sergeant BARRY. When you went on deck, did you take charge of the vessel?—When I went on deck I had to take charge of the vessel and the hatches—

You were saying something about the hatches?—They were closed down, and nothing was to be seen except six or seven men working about the deck.

When you took charge of the vessel, in what direction did you sail her?—My own men—

The CHIEF BARON. Were there any more in the cabin than the person in charge of the vessel, the prisoner at the bar, and the man that was brought into the dock?—I can't say; I was "in terror," and don't know.

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Sergeant BARRY. In what direction did you sail the vessel?—My own crew stood off; they saw nothing there; they didn't see anything on board, or didn't take notice of what the parties did in the cabin.

Where were they?—They were on deck, and went into the galley-house, poor fellows, to warm themselves.

Did they leave after you came on deck?—When I came on deck they stood off for home, with nothing in the boat with them. It was a Friday and the steward gave them meat; but they wouldn't eat it. He then threw a lump of pork into the boat to them; that was all they had with them.

In what direction did you sail the vessel?—I got the vessel on small canvas so that I could put her in. I reached in towards Mullaghmore coast guard station as near as I could, when I thought I couldn't give fair evidence if I was taken up.

How near to the land did you go there?—Within half a mile of the shore.

That station is in Donegal bay?—Yes.

Where did you stand to then?—I stood her out when I didn't see the coast guard come out from that station. I reached towards St. John's Point station on the northern shore.

The CHIEF BARON. Was that from the Sligo or the Donegal side?—From the Sligo side.

You say you were within half a mile of the Donegal shore?—Of Mullaghmore station.

Then you stood out again from the Donegal side?—From the northern side.

Where did you first steer to?—To Mullaghmore station.

That is on the northern side?—Yes.

Where did you go then?—I reached her across for St. John's Point station.

Sergeant BARRY. Is Mullaghmore the southern point of Donegal bay?—It is.

And St. John's is the northern point of it?—Yes, the northern point.

Are they both on the Donegal side?—They are in Donegal bay, but Mullaghmore is in the south of it.

On what coast is Mullaghmore?—On the Sligo coast.

And on what coast is St. John's?—The northern point.

In what county is it?—In the county Donegal.

How near did you go to St. John's?—Within half a mile, and when I saw they didn't come out—

Who didn't come?—Seeing that the coast guard of St. John's Point station didn't come out, I let the vessel drop down until the Killybegs coast guard would see her. Killybegs station is a little to the west of St. John's Point, and I let her drop down, thinking the coast guard would come out.

Killybegs, I believe, is further in in the bay than St. John's?—It is further to the northward.

How close did you go there to the shore?—Not within two miles.

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Where did you go after that?—When I didn't see any of them coming out I asked the man in charge was it near the time to take the vessel to where the captain was to come. He told me it was; it was then drawing near six o'clock in the evening. We then set canvas on the ship and laid her across.

The CHIEF BARON. To where?—To Streedra coast guard station.

That is south of Sligo again?—It is south to Sligo; it is between Sligo and Mullaghmore station.

Sergeant BARRY. That is inside of Innismurry island, I believe?—It is.

Did you come close to Streedra?—We did, close enough to land. There was no sign of any captain coming, and then we got sails aback on the vessel, and she was heaved to there until ten o'clock. About ten o'clock I was standing on the quarter-deck. I saw a hooker running down as if she came down from Killybegs, and she came under the stern of the ship. A man out of the smack hailed to the man in charge of the vessel. I didn't understand what was the language.

What occurred then?—The man in charge ordered the men to get the boat on deck into the water.

The ship's boat?—The ship's boat. The ship's boat then went to the hooker.

What did it do?—It took the man in the hooker on board the vessel; he then went down into the cabin, and he was in the cabin about half an hour.

Was anything said about who this man was?—Not at this time. He came on deck again and walked over to go into the boat. I asked the man in charge was that the captain, and he said, "Watch your own business, watch the vessel." I said, "I am long enough watching the vessel, and I will stop no longer." I then went forward to the rail of the ship and jumped into the boat.

What boat?—The ship's boat.

Had the strange gentleman that came on board got into the boat at the time?—He had. The man in charge ordered me up out of the boat again, and said that he had two wounded men to land on shore and send to hospital the next morning. That was the coming morning. Then I was dragged out of the boat on deck. I refused to come out of the boat when I was ordered, and I was dragged out.

Had you heard previously of any mention of two men being wounded?—I had, I forgot stating that. When I was about two hours on board the vessel, he told me these two wounded men had a fight on the morning before I went on board, and that one of them drew a pistol out, and that the two got wounded by the pistol-shot.

After you were taken out of the boat as you described, did the boat leave with the man on board?—It left the gentleman on board the hooker and came back to the ship again.

Did you hear any name given to that man on board?—No, I did not.

You remained on board the vessel until when?—I remained on board until one o'clock in the morning.

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What occurred then?—About one o'clock he told me to reach the vessel close to the shore, in order to land these wounded men and send them to hospital. I did so. I put the vessel in until I got but four fathoms of water, opposite the Streedra coast guard station.

How close to the shore was that?—It was within a quarter of a mile of the shore.

When you got so close what occurred?—We got the sails back on the vessel, and the wounded men were sent down into the boat.

How many?—Two, and three more who were not wounded, that was five, and we pulled for the shore.

What occurred then?—When I was pulling the after oar, we pulled until we got into a beach of sand; when the boat struck on the sand I was carried out of the boat, and I stopped on the sand until one man was carried up on the bank.

The CHIEF BARON. How were you carried?—By one of the men that was in the boat. I then stopped on shore until one of the wounded men was up with me as far as the beach. I walked away then and left them there. I had to go fifty miles to my home, and I thought it was time for me to make for home. When I was going up a piece from the shore I met two of the Streedra coast guard.

Sergeant BARRY. Would you know either of the wounded men, or any of those who came on shore with you if you saw them?—I think I would.

Turn round and see if you know any of them?—That man (pointing to Nugent) was on shore with me.

Do you know what his name is?—No.

Was he one of the wounded men?—No, he was not.

Do you see any of the wounded men?—Yes, that is one of the wounded men (pointing to another of the prisoners named Coffey *alias* Nolan.)

The CHIEF BARON (addressing the prisoner.) Do you wish to ask the witness any questions?

The PRISONER. No, my lord; I will only call your attention, for the sake of law and justice, to his direct statement that he made on the 27th of May, when he swore he received no money, though he now swears he received five or six shillings. He also swore then that he was on the look-out on shore; he now swears that he was in a small boat. For the sake of law and justice, I wish you would analyze his evidence.

WITNESS. I would like to say a word; I reported that I didn't get my pilotage which I agreed on, the two guineas.

The CHIEF BARON. Prisoner, if there be anything else you wish to ask him, when we return you can mention it to me, and I will have it asked.

The PRISONER. In his first informations, which are the only genuine ones—the others are improved editions under the supervision of Mr. Anderson—he swore that the man in charge did not tell him what cargo was on board; that he saw eight or nine men on board, and that he told two coast guardmen whom he met that that was all he knew to be in the vessel; yet

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he now swears that the man in charge told him that she had a light cargo of fruit, and he swears a great deal more than he did in his informations.

WITNESS. I proved to nothing on board at that time; I only proved to the ship's crew.

The PRISONER. If your lordship would analyze his three informations and compare them with his evidence here to-day, you will find it is a tissue of perjury from first to last.

The court here adjourned for a short time. On resuming—

The CHIEF BARON asked the prisoner if he wished the entire witness's informations to be read, or only a portion of them.

The PRISONER. I only suggest, for the sake of law and order, that your lordship should analyze his informations and compare them with his evidence hereto to-day.

The CHIEF BARON. If you don't desire that the entire should be read I will only read such portions as are, in my opinion, material. (To the witness.) You were sworn to an information made by you on the 27th of May and to two more on the 15th of June?—Yes.

And you were sworn to another made on the 12th of October. In the information you swore on the 27th of May do you recollect stating this. After stating that on Friday, the 24th instant, you observed a vessel in Teelin bay, and that you boarded her to know if she wanted a pilot, and after telling what passed between you and the man in charge, you proceeded to say, "He told me the vessel was from Spain, bound to Glasgow; but he did not tell me what cargo. I saw about eight or nine men on board, all, I believe, sailors. I was landed about half-past one o'clock a. m. on Saturday morning, the 25th instant, at Milk harbor, on the Connaught shore. The two wounded men were also landed at the same time. I received no money for my services, as the man in charge told me he had no money when the captain did not come. A short distance from where I landed, about two miles, I met two coast guardmen, who made inquiry about the vessel. I told them all I knew; they said they had been watching her, and proceeded on towards the shore. I know nothing further concerning said vessel." Do you remember having sworn that?—I did. I could not give fair evidence on board the vessel.

It was in your informations you stated that you did know nothing more about the vessel except what you stated to the coast guard. Did you tell the coast guardmen all you knew about it?—Yes.

Is that true what you swore there?—It is. I told them that the man in charge of the vessel said he came from Spain, and was bound for Glasgow. That was what he told me.

Did you tell the magistrate all you swore here to-day?—No. I was sworn in the vessel, and I could not give fair evidence there.

And that is the reason you didn't tell him what you told here?—It was.

What is the reason you state in your information that "I know nothing further concerning said vessel?"—I knew nothing of law. I never stood on the bench before, and I have a large family.

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It isn't what you told the coast guardmen, but what you swore in your informations I am now referring to. You swore two things in your informations: first, that you told the coast guardmen all you knew, and next, that you knew nothing concerning the vessel except that which you stated in your informations. These informations do not contain any of the matters that you stated here occurred in the cabin of the vessel. Can you state how that occurred?—I only reported to the ship's crew what the man in charge reported to be on board the vessel.

You were not asked what you reported to the ship's crew, but what you reported, as you term it, to the magistrate—you told them you stated all you knew, and that you knew nothing more concerning the vessel than what you had told the magistrate.—I told the coast-guard—

What did you swear to the magistrate—did you swear this to him: "A short distance

from where I landed, about two miles, I met two coast guardmen, who made inquiry about the vessel; I told them all I knew; they said they had been watching her, and proceeded on towards the shore. I know nothing further concerning the vessel"—did you tell them all you knew?—No, I didn't.

Did you know more about the vessel than you swore to?—I don't know.

Did you tell the magistrate all you knew?—I told him I saw about eight or nine men on board, and that I got a report from the man on board that she had a light cargo of fruit.

Did you tell the magistrate what occurred in the cabin?—No; because I swore I would not do so.

The PRISONER. All he says in his informations is, that he didn't know what the cargo was, and he didn't ask what it was.

The CHIEF BARON. He didn't say anything about the cargo.

The PRISONER. This very moment, my lord, not five minutes ago, he said he told the magistrate that she was laden with fruit. Yet in his informations he says "the man in charge told me that the vessel was from Spain, bound to Glasgow; but he did not tell me the cargo." He says now she was laden with a cargo of fruit.

The CHIEF BARON. You are very right. (To the witness:) Did you report to the magistrate that the vessel was laden with fruit?—Yes, I did.

This is what the magistrate took down, and what you are stated to have sworn, that you told him that the man in charge told you the vessel was from Spain, bound to Glasgow, but that he did not tell the cargo?—I stated that she came from Spain, and was bound to Glasgow, and that she was laden with a cargo of fruit.

Did you tell that to the magistrate?—Yes.

On the 15th June you swore another information: do you remember that?—There were only two reports before the report I made in Dublin.

And one of these was made on the 15th June?—Yes.

You made informations twice on the 15th June, one after you saw the men that were wounded; do you remember that?—I don't know.

After you went to Sligo jail, do you remember?—Yes.

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You made an information both before and after you went there, and you stated in one of these informations that you were on shore about seven o'clock in the morning on the look-out, when you saw the vessel; that your own boat was then aground; that you took Pat Meehan's boat, with six men beside yourself; further down you stated that you didn't ask the name of the vessel, nor did you hear it. "I didn't ask the captain's name, nor did I hear it; I did not hear or ask the name of any man on board." That was your information of the 15th June.

The ATTORNEY GENERAL. Your lordship is passing over two or three lines at the foot of the third paragraph.

The CHIEF BARON. The discrepancy is in the information of the 27th May, and it may have occurred from the magistrate not taking down all the witness said. In the information of the 15th June, you state, "I asked him where he was from; he said from Spain, and bound to Glasgow, with fruit?"—Yes, that's where it is.

In your informations of the 12th of October, you state, "I remember a Friday, near the end of May last; I saw on that day a brigantine coming from Sligo bay; I had noticed her on the previous day; on the Friday I was in a row-boat, looking out as a pilot, when I saw her"——

WITNESS. That's in the wrong place there; I saw her on Thursday, and I boarded her on Friday. I was on shore at the time.

The CHIEF BARON. After stating that you agreed to pilot the vessel for two guineas, you proceed to say, "The brigantine seemed to be about 180 tons burden; I cannot say about what length she was; she was about twenty or twenty-five feet beam. I asked the name, but the man in charge would not tell me. I could not get the name of the captain."

The PRISONER. In his statement of the 15th June, my lord, he swears positively, "I did not ask her name, nor did I hear it; I did not hear or ask the captain's name, who was said to be on shore, nor did I hear it. I did not hear or ask the name of any man on board." So that in almost every line he contradicts himself.

The CHIEF BARON. You state in your information of the 15th June, "I did not ask her name, nor did I hear it; I did not ask the captain's name, who was said to be on shore, nor did I hear it;" while in your informations of the 12th October you say, "I asked her name, but the man in charge would not tell me"—how do you reconcile these two statements?—I told the magistrate that I did not see the name of the vessel, and that even if I did I would not be able to read it, as I was no scholar; and that I had to leave the vessel without the name of her, or of the captain, and without my pilotage.

You are asked how you reconcile these two statements—on the 15th June you swore that you did not ask the name of the vessel, nor did you hear it, and that you did not ask the captain's name, nor did you hear it; while on the 12th October you swore that you asked her name, but the man in charge would not give it.—In my report to the magistrate, I said that I could not see her name, and that if I did I could not read it; and that I could not get the name of the captain, as he was on shore.

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How is it that you say in one instance that you did ask for the vessel's name, and in the other that you did not ask it?—It may be put down wrong.

You stated that it was in the evening you saw the vessel?—Yes; the evening before.

Were you then on shore?—I was.

When you saw her the second time where were you; were you on shore also?—Yes, on shore.

How is it that in your information of the 12th October you swore "On the Friday I was in a row-boat, looking out as a pilot when I saw her?"—That is wrong; I never reported that. I reported that I was on the lookout for the vessel on Thursday; that on Friday morning I saw her coming out from Sligo bay, that I pulled out with six men and went on board of her.

Is it not the fact that you were in a row-boat when you saw her?—I was on shore.

And not in a row-boat?—We pulled out in a row-boat.

What do you mean by saying that you went to two places on the Donegal shore for the purpose of seeing whether any of the coast guard men would come out?—The reason is that when I saw these men swear me in the vessel, I knew I could not give fair evidence or report, and I could not get out of the vessel. I thought the coast guard men would come out and take me on shore.

That they would come for the purpose of taking the vessel?—For the purpose of taking me away.

The PRISONER. I would call your lordship's attention to his first information, where he says that he met two coast guard men to whom he told all he knew.

The CHIEF BARON. Did you intend to tell the coast guard in case they came out why you wished to leave the vessel?—I knew that if they came out they would know if there was anything wrong with the vessel.

Did you expect the coast guard men to come out and take you from the vessel?—I thought it was strange that they did not go out in a boat, as it was their business to do.

Was it to get yourself safe from it you wished them to come out?—It was.

Would you not tell them what happened, if they came out?—Perhaps I would not tell them, as I had sworn a solemn oath in the cabin.

You stated in a part of your evidence that "I got the vessel on small canvas; I reached her in towards Mullaghmore station of coast guard as near as I could, when I thought I could not give fair evidence if I was taken up;" what do you mean by that?—When I was sworn not to report the vessel, I thought I would reach her close to the shore, and that the coast guard men would come on board, and would know what was the vessel.

Did you intend to give them fair evidence, or report as you call it, in case they did come on board?—No.

What do you mean by saying that you could not give fair evidence?—I didn't say that.

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That is what you did say—what do you mean by it?—I thought that if the coast guard men came out they would take myself out of the vessel.

What do you mean by saying you could not give fair evidence?—Because I was sworn not to report or tell anything I had seen.

Had you expected the vessel to come, previously to your boarding her?—No.

Had you heard nothing about her?—Nothing since I was born. There is not a pilot on shore that can pilot a vessel along that coast with me; I have saved life and property there for the last twenty-five years.

The PRISONER. There is one point, my lord, I would especially call your attention to, and that is, that when leaving this imaginary vessel he says he met two coast guard men to whom he says he told all he knew, yet he swears now that he never told them a word about the vessel, or what was done on board.

WITNESS. I beg your pardon. I told them what I was, and they said, "I suppose you were on board the schooner that was sailing about?" I told them that I was. I thought it was their duty to go and see after it.

The PRISONER. I say that the man who is guilty of being a suborner of perjury, as has been done here, should be in the dock where I now am.

The CHIEF BARON (to witness.) Where have you been since your informations were taken?—Is it the first report?

The second?—I was taken to jail, away from my family.

When was that?—I was only three weeks at home when I was taken to Lifford jail, and afterwards to Dublin.

Was that before the informations you made in October?—No; after it.

Where were you in October—how long were you in jail?—Six or seven weeks.

How long were you there after you swore your first information in May?—About three weeks.

Were you in jail when you made your second information?—No. Three days after I was in Sligo jail identifying the men I was arrested.

From that time to this you were in jail, were you?—No.

How long were you there?—I am not sure.

The PRISONER. He was in Kilmainham jail with me for five or six weeks. He was brought there afterwards to identify me.

The CHIEF BARON. How long were you in jail—were you in jail when you made your last information, on the 12th October?—I was.

How long after that did you leave the jail?—Four or five days after. I made my report before I got out of it.

How long is it since you left jail?—That's the thing I can't say.

Is it a week ago?—I was in jail when I came to see them.

When did you leave it?—I am out of jail, as near as I can go, nine or ten weeks.

How long were you in jail?—Six or seven weeks.

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The PRISONER. He was brought to Kilmainham, my lord, and put in the same yard with me, where he heard my name called several times, and knew I was the party. He afterwards was taken away, and brought back again to identify me.

The CHIEF BARON. Were you in jail with the prisoner?—I was.

The PRISONER. And in the same yard?—I was.

The CHIEF BARON. Were you taken away from jail before you swore your last information?—Yes.

How long after you were taken from jail did you swear it?—Two months.

Were you told you would gain anything by making that information?—No.

Were you told you would be let out if you made that information?—No.

The PRISONER. The presumption is that if there were twenty men on board this imaginary vessel they would get two out of that large crowd to come here; but it is better they put up a man without brains. They have not a foot to stand on, I submit to the whole world.

The CHIEF BARON. Have you anything else you wish to ask this witness?

The PRISONER. No; I don't admit the jurisdiction of this court, and it was only for the sake of law and justice that I asked your lordship to analyze his evidence. I beg to return your lordship my most sincere thanks for doing so.

The CHIEF BARON. You are under no obligations in the world to me. I have only to do justice between you and the Crown.

JAMES NOLAN examined by Mr. LONGFIELD, Q. C.

The witness, on coming on the table, said: I decline to give evidence.

Mr. LONGFIELD. On what ground? What is the reason?—I got my liberty some time ago to leave the country, and I have been brought back again, not of my will. I was taken prisoner in Liverpool and brought back.

Do you think it would injure you to give evidence?—I think it would.

Swear first, and then you can decline to give evidence when I ask you any question that you don't wish to answer.

(The witness was then sworn.)

The PRISONER. I protest against this man being compelled to swear and to give evidence.

The CHIEF BARON. The law requires that he shall be sworn, but it is my duty to tell you (to witness) that you are not bound to answer any question that may criminate yourself—that is, that may expose you to a prosecution.

WITNESS. I decline, sir, coming on the table at all.

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The CHIEF BARON. You are bound to come on the table, and you are bound to be sworn, but you are at liberty to withhold any answer which would give the grounds of a prosecution.

Mr. LONGFIELD. What is your name?—Daniel Coffey.

Have you gone by any other name?—James Nolan.

Are you a native Irishman?—Yes.

Did you go to America some years ago?—I did, sir.

The CHIEF BARON. You are not bound to give any answer that may criminate yourself. You are bound to state everything that is not calculated to criminate you. You are not bound to state anything that may.

Mr. LONGFIELD. I assure your lordship that I don't wish to get him to answer any question that might criminate himself.

The CHIEF BARON. I am quite certain of that, Mr. Longfield; I know you would be the last man to do it.

Mr. LONGFIELD. I have not asked any question that could do so, but I am now about to ask a question of a different character. (To witness.) Did you at any time when in America become a Fenian?—I decline to answer.

Did you at any time in this year become a seaman, or go on board, in any capacity, a vessel called the Jackmel?—I decline to answer, sir.

Did you suffer from any wound lately?—I decline to answer, sir.

Mr. LONGFIELD. Does your lordship think I cannot go any further?

The CHIEF BARON. Certainly.

Mr. LONGFIELD. I am bound to admit that, if he claims protection, I cannot go any further.

The CHIEF BARON. These three questions show that the examination cannot be proceeded with.

JOHN HAUGHEY, examined by Mr. MURPHY, Q. C. :

Where do you live ?—Donegal.

What are you ?—A laboring boy.

Do you know Michael Gallagher, the pilot ?—I do.

Do you recollect on a Friday in May last going into a row-boat with him ?—Yes.

What other men were in the row-boat with you ?—Pat. McGehen, Pat. Gallagher, John Byrne, James Brown, and Patrick Byrne.

Where did you get into the row-boat ?—At the quay of Towney.

Is that in the county of Donegal ?—Yes.

Where did you row out to ?—Mullockmore.

Did you go to any vessel there ?—Yes.

Who went on board the vessel first ?—Michael Gallagher, the pilot.

Did you go on board ?—I did, sir.

How many of the other men went on board with you ?—Three men.

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About what hour in the day was it that you went on board ?—About twelve o'clock.

How long did you stay on board the vessel ?—About an hour and a half.

Where did you stay the time you were on board the vessel ?—At the rail.

Did you go below at all ? No, sir.

The CHIEF BARON. Did you go anywhere to warm yourselves ?—I did, sir ; to the galley-house.

Mr. MURPHY. Did you see while you were on board where Michael Gallagher went ?—He went to the cabin.

Did you see who took him there ?—No.

Did you see was there any person with him when he went down ?—I was the third man that went aboard.

Was it immediately that you got on board you saw Gallagher going down to the cabin ?—He was down when I went on board.

The PRISONER. This witness was in court during the examination of Gallagher, and heard every word he said.

The CHIEF BARON. That should not have been. The usual course is to have the witnesses out of court.

Mr. MURPHY. There is no rule on the subject, my lord.

The CHIEF BARON. No rule, but it is the usual course.

Mr. MURPHY. Unless your lordship makes an order ——

The CHIEF BARON. I make no order ; but I know, both as prosecutor and judge, that it is the practice.

Mr. MURPHY, (to witness.) How long after you went on board did you see him coming out of the cabin ?—He did not come up until I was just leaving.

How many men did you see on the deck of the vessel ?—I did not see past seven men.

Did you see who was in command of the vessel ?—No.

Did you know the name of the vessel, or learn it whilst you were on board ?—No.

Did you see or know what the vessel had on board—what cargo ?—No.

About what place did you land when you came ashore from the vessel ; did you come to the same point you left ?—I did.

Did you leave Gallagher on board ?—Yes.

When did you next see Gallagher after that ?—Two days after that.

The CHIEF BARON, (to prisoner.) Is there anything you wish to suggest, or to ask this witness ?—No, my lord.

DANIEL JONES, examined by Mr. BEYTAGH :

Where do you live ?—Mount Edward, county Sligo.

Do you know the strand of Streeda ?—I live convenient to it.

Do you take sea weed there ?—Yes.

Do you remember the morning of the 25th May last ?—I do, sir.

Did you go down to the strand of Streeda that day ?—I did.

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When you got to the strand did you see any one ?—As I was going along for sea manure two wounded men were lying on the sand. I asked them what brought them there, and they said they came in at twelve o'clock that night.

The CHIEF BARON. I do not think the conversation between these men is evidence here.

Mr. BEYTAGH. In consequence of what they said to you, what did you do ?—They asked me to go for a horse and cart.

Did you go ?—I went to a man convenient—Michael Broom.

Did you get a horse and cart from him ?—I did.

Were the men lying down ?—They could not move at all.

When you came back were they there still ?—Yes.

Where were they wounded?—One of them was wounded in the knee, and the other in the ankle.

What did you do with the wounded men when you came back?—The coast guards came down and put them on the cart.

Where were they taken to?—To Mr. Jones's.

Did you go with the cart and men to Mr. Jones's?—No.

You left them in the hands of the coast guards?—Yes.

The CHIEF BARON. Do you know the name of the coast guards?—The name of one of them is Burke.

The CHIEF BARON, (to prisoner.) Do you suggest anything to ask this witness?—Ask him, my lord, how far Milk Harbor is from Streedra.

The CHIEF BARON, (to witness.) How far is it from Streedra to Milk Harbor?—About a mile, sir.

How far is it from Milk Harbor to the place where the men were on the strand?—A mile, sir.

Anything more? (to prisoner.)—No, my lord.

JOSEPH CLARKE, examined by the ATTORNEY GENERAL:

I believe you are a coast guard man?—Yes.

At Streedra?—Yes.

Do you remember May last?—Yes.

Do you remember meeting Gallagher, the pilot?—Yes.

The CHIEF BARON. What date?—The 25th May.

The ATTORNEY GENERAL. What hour of the day?—About 2.15 a. m.

The PRISONER. My lord, this witness was also in the gallery during the examination of Gallagher.

The CHIEF BARON, (to witness.) Were you?—Yes.

That does not make him inadmissible.

The ATTORNEY GENERAL. Had you any conversation with Gallagher?—Yes.

After you saw him did you meet anybody else?—Yes.

Did you know the man you met?—He gave me no name at the time; he was a stranger to me.

Had you some conversation with him?—Yes.

The CHIEF BARON. Do you now know who he was?—Yes.

The ATTORNEY GENERAL. I don't ask you what he said, but did you take him into custody?—Yes.

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Where did you take him to?—The coast guard watch-house, near Streedra.

When you were in the station, were any persons brought in there?—Yes; two wounded men.

Where were they wounded?—One through the thigh, and the other in the ankle.

Would you know either of these wounded men?—I won't be too positive.

Would you know the man you took into custody?—I think I would.

Do you see the man you took into custody?—That is he there. (The witness pointed to a man in the dock.)

The PRISONER. Were you in the court when Gallagher identified these men?—I don't know; but I would know that man.

The CHIEF BARON. Was that the man you took into custody?—Yes.

The CHIEF BARON. Who is that man?

The ATTORNEY GENERAL. Patrick Nugent, my lord. (To witness.) Do you see either of the wounded men in court?—I think that one there, but I won't swear positively to him. They were lying down in the station while I was there.

The CHIEF BARON. That is Coffey, I think.

The ATTORNEY GENERAL. Yes, my lord. (To witness.) Did you observe any ship cruising off the coast that morning?—I saw a small speck at daylight out in the offing, and we could not make out what she was.

Did you see a vessel cruising there the day before?—Yes.

On the 24th?—Yes.

What kind of a vessel was she?—A brigantine.

Did you remark anything about her rigging?—She had a double topsail yard rigging.

Was she near shore when you saw her on the 24th?—At four o'clock in the morning she was about two miles off Streedra station.

The CHIEF BARON, (to prisoner.) Do you suggest anything to ask this man?

The PRISONER. What did Gallagher say to him, or what did he say to Gallagher?

The CHIEF BARON. I think you are entitled to have that asked.

The ATTORNEY GENERAL. Had you any conversation with Gallagher?—I had.

What direction was he coming in?—From Streedra shore.

Was he walking or running?—Walking.

What did you say to him when you met him?—I asked him who he was. He said he was a pilot. I asked him where he came from. He replied that he was landed from a brigantine.

I asked him was she the topsail-yard brigantine. He said she was. I asked him what she was. He said she was a Spanish vessel from Spain, bound to Glasgow. I asked him what cargo, and he said he did not know. He told me he was out fishing, and he boarded her.

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He was asked to take her into Killybegs, and when north of Killybegs he got orders from the man on board not to enter that harbor. He then stood over towards Streedra shore.

That is what Gallagher said?—Yes: and he said that one who was the captain or mate, or whoever was in charge, said they would land the pilot, and proceed to Glasgow themselves.

Did he say anything more to you?—No, he did not.

He said nothing about wounded men?—No.

Nothing about the captain?—No.

And nothing about remuneration?—No.

There is nothing else in the information.

The CHIEF BARON. He did not tell you anything about what happened to him in the vessel?—No; that is all he told me.

The CHIEF BARON, (to the prisoner.) Is there anything else you would suggest?

The PRISONER. That is all, my lord.

BERNARD BURKE examined by the SOLICITOR GENERAL:

Are you one of the coast guard at Streedra?—Yes.

Do you remember the 25th of May last?—Yes.

Were you on duty on that morning on the shore?—I was.

What day of the week was it?—Saturday morning.

About what o'clock did you observe anything from the shore?—Between five and six.

And what did you observe?—I observed a horse and cart going down to the shore, and on arriving there I met another man, a civilian, and two wounded men on the sand banks.

Did you go down after the horse and cart?—Yes.

The CHIEF BARON. What way was it going?—In the direction of where the wounded men were found.

You said you found there were two wounded men on the sand?—No; I did not say that.

Upon arriving at the shore you got another man, a civilian, and two wounded men lying on the sand banks?—Yes.

You followed a horse and cart going to the shore?—Yes; it was going to the shore, and I found the wounded men in the direction in which it was going.

The SOLICITOR GENERAL. Do you know the name of the man who had charge of the cart?—He is named Michael Byrne.

And do you know the name of the civilian who was on the shore?—He was of the name of Jones.

When you came up, were the wounded men talking? I do not ask you what they were saying, but were they talking to the civilians?—Yes.

Had you any conversation with these men? I do not ask you what it was, but had you?—Previous to going?

No, but when you were there?—Yes; I asked the man a question.

The CHIEF BARON. One of the wounded men?—Yes.

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The SOLICITOR GENERAL. Did you observe any marks on the beach?—There was a considerable lot of foot-tracks upon the banks between the water and where the men lay.

Did you observe how the men were wounded, or where?—I made an inquiry, and one man told me he was shot.

Did you observe any bandages on him?—Yes; one was bandaged round the thigh, and the other man round the ankle.

What did you do with these men, and the horse and cart?—I asked these men where they came from, and I got them conveyed to the watch-house.

The CHIEF BARON. The wounded men?—Yes.

The SOLICITOR GENERAL. Do you observe either of these men in court?—Yes. [The witness here identified the prisoner Coffey.]

Had you before that morning observed any vessel out in the offing?—Yes.

What build was she?—I saw a brigantine on Friday evening stand over towards our shore.

Stand over in what direction?—Towards the Donegal shore.

What was her build?—To the best of my opinion she was an American built vessel.

Had she her sails set?—She had.

The CHIEF BARON. Do you know the build of an American vessel?—Yes, I have a knowledge of the build.

What did you say about the sails? She had the sails set, and a double topsail-yard forward; she was under easy sail.

Were her motion and trim, and her sail altogether, such as would be adopted by a vessel that was waiting in the place between these two coasts?—Yes.

The SOLICITOR GENERAL. How long during that day did you so observe her?—I saw her on Friday morning about nine o'clock; she was over then on the Donegal shore.

About how far from where you were?—Well, about fourteen or fifteen miles.

That is over at St. John's point?—Yes.

Is Killybegs a little to the north of that?—Yes.

And what is the position of Mullaghmore in that bay? That is the southeasterly point?—Yes.

And all between that is the bay?—Yes.

And you saw across it?—You have a good view across it.

You say she was at St. John's point in the morning?—In that direction.

Just describe what you observed during the day?—On that morning I saw her over there. I did not see any more of the vessel until that afternoon. She then stood over close under our shore.

Did she come close to your shore?—Yes.

The CHIEF BARON. About what time was that?—Between four and five in the evening.

The SOLICITOR GENERAL. Were you on duty at that time?—I was.

How near did she come?—I should think she came within about two miles of Streedagh

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point, and she took them from that and stood away in the direction of Donegal shore again. That night, between nine and ten, she stood over on our shore again.

And was that the last you observed of the vessel?—Yes; that is the last I observed of her.

The CHIEF BARON (to the prisoner.) Can you suggest anything to ask him?—No.

PATRICK BROWNE examined by Sergeant BARRY:

Where do you live?—At Ballinagoulmore, near Helvick.

Do you know Patrick Whelan?—I do.

He does not speak English?—No.

Do you remember, on the 1st of June last, being in his boat?—I do.

Were you fishing?—Yes.

The CHIEF BARON. You were in his boat?—Yes.

Did you ever speak to him in English?—I did.

Does he speak English?—He could not tell a story, but he would say a word or two.

You can speak Irish?—I can.

Sergeant BARRY. How many were in the boat?—Seven altogether.

The CHIEF BARON. What kind of boat was she?—She is a boat of about five or six tons.

Was she half-decked?—No, sir; an open yawl.

Sergeant BARRY. Do you recollect seeing a vessel coming alongside you?—Yes, sir.

What hour of the day was that? About what hour?—It was about—we had no watch with us. We used to be puzzled about the hour of the day. It was about six o'clock when we left our own harbor, and we had two reefs going out to the nets about three miles from Helvick.

The CHIEF BARON. Was it before the middle of the day?—It was past the morning, and it was in the day.

Sergeant BARRY. What kind was the vessel?—She was a brig, sir, with white sails.

The CHIEF BARON. Was she a brig or a brigantine?—A brig, I think; but I do not know the difference.

How big was she?—I heard the men say of her that she was up to three hundred and a half tons.

Sergeant BARRY. When she came alongside, what happened?—We had twenty nets, altogether about forty fathoms long, and when she came up to us some men who were engaged on board of her asked us had we no fish. We told him no, we had no fish, for the day was very rough.

What happened then?—Whelan told us that he himself would not go with the boat to the vessel for fear the boat would be broken. The man on board asked us what we would charge for landing two men. Patrick Whelan then told Collins to go up to the sheets and say he

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would land them for £2; Collins was one of our men. The man on board told us to drop the nets and come alongside, and that he should give us the £2; so we dropped the nets. We had four of them drawn into the boat when he was speaking to us. We dropped the nets there and left them in the sea after us, and went to the vessel; we went alongside. His own boat was level with the sea—a long yawl he had—and he told us to come alongside. We came round the stern, and there was no name on the vessel, and we ran alongside her, and he pulled up his own boat out of the way. He threw down a cable, and one of the men from the vessel jumped down and fastened it. The cable was not made fast until one of the men from the brig jumped down and made it fast to the beam. There was a great rolling in the bay while he was there, and we had to bear against the side of the vessel for fear she should lie down upon the small boat; and I had the helm against my breast, keeping the boat out from the side of the vessel, for fear she would get under the side of the vessel. She was covered up above the water-line, and Whelan was trying to keep her off with a pole. "Run up," says Whelan to me, "and tell him to send down the two men, or else we will

go away." I went up then on board and told him to send down the two men, that we would be going away, and they told me it was time enough.

The CHIEF BARON. You were holding on to the vessel when he said that?—I had a hold of her on the left-hand side.

Sergeant BARRY. What were you standing on?—I was on the deck of the brig.

When you got on the deck did you see any men? Four men altogether. I saw the man who spoke to me first there. I came down. Whelan said, "Are they coming down?" "I do not know," says I. I remained a little time in the boat, and upwards of thirty of these men came down and jumped into the boat. "We are all lost now," says Whelan. "We are," says I. "but how can we help it?" The boat took a lurch into lee water, because they came down on one side of the boat. "Get the bucket," says Whelan to me, "and bail out the water as fast as you can." Whelan then told them to come to one side of the boat, and he told them to manage themselves in the boat as well as they could, for fear the boat would be turned. "What will I do now?" says Whelan. "Get them into the coast guard station," says I. "as fast as you can, and leave them there." So we did. We came in towards the coast guard station, and they asked Daniel Collins what this house was, and he told them this was the coast guard station, and they would not go out there.

The CHIEF BARON. Who asked what house it was?—Some of the men.

What did they say to that?—They said they would not go there.

Sergeant BARRY. What then?—Whelan then told Collins to ask them would they go up to the town of Dungarvan. Collins asked them, and they said they would not. "Well," says Collins, "there is a patch of strand there, and we might as well beach you there." "That is the place," says one of the men, "let us go there."

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What part was that?—About a quarter of a mile from our own port, between Ballinagoul port and Cunnigar house.

Did you pass near the coast guard station going to that port?—We did, sir.

Did the men say or do anything then?

The CHIEF BARON. They did not go to Ballinagoul port?—No; we landed in three and a half feet water outside Ballinagoul port.

About how far from the port?—About a quarter of a mile.

About how far from the coast guard station?—It was upwards of a mile.

As you were going along, did you pass the coast guard station?—Yes.

When passing it, did the men say or do anything?—No, sir.

How were they in the boat?—They were sitting down.

In what water did you beach the boat?—In about three and a half feet of water.

When the boat was beached what became of the men?—They jumped out and went off on the strand. Some of them took off their trowsers, but one man stripped into his skin. Some of them only took off their trowsers. One took off his trowsers and drawers and turned up his shirt.

Did they go away then?—They did, sir.

And you went back again?—Yes; we went out and took up our nets.

The CHIEF BARON. Were you paid the £2?—Yes.

Who got the money?—I got it from a man in the boat.

How much did you get?—£3; and I gave it to Whelan; and they gave 10s. to Whelan on the strand.

Sergeant BARRY. Was the £3 given before you left the vessel, and when they were in the boat?—Just when they were balancing the boat.

The CHIEF BARON (to the prisoner.) Is there anything you would like to ask?

The PRISONER. No.

Sergeant BARRY. Do you know any of the men?—No, sir.

The CHIEF BARON. Describe the way they were sitting when passing the coast guard station.—They were sitting as I am sitting.

Would their bodies be seen above the gunwale?—Oh, they would be seen. Their heads were up; some of their heads were up.

Did they alter their positions from the time they got into the boat?—They were sitting all the time.

DANIEL COLLINS, examined by Mr. LONGFIELD, Q. C.:

Do you remember the 1st of June last being in Whelan's boat?—I do.

Who were in it with you when you went to draw the nets?—Patrick Browne, Whelan, myself, and Dan Collins.

Did you go alongside the brig to take some men off that day?—We did, sir. We dropped our nets first. We had four of them out before the vessel came alongside us.

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Did a number of men go on board you?—They did.

Did you take them on shore?—We did.

About how many men altogether did you see going into the boat?—Well, I did not count; but a boy counted them. There was about thirty.

When they got on board were you in danger of being swamped?—We were in danger from

their coming on board. They came down plump together, and brought the water into the boat. We hoisted our sail, and fetched them home.

Did you run in towards Dungarvan harbor?—We came in to our own beach, and when we were coming in they saw a white house; they asked me what house that was, and I told them the coast-guard house.

Was that inside Helvick?—Yes.

And then they told you they would not go ashore there?—Yes; and I asked them would I take them up to Dungarvan town; they told me not; I then said there was no place only to beach the boat on the strand, and they told me that was the right place.

When passing Helvick Head, were they sitting or standing in the boat?—They were sitting on the nets.

Were they in the bottom of the boat?—There was ballast in the boat, and they could not sit lower than they were sitting.

Did you beach her there?—We beached the boat in three and a half feet of water.

Did they all get out of the boat then?—They did.

Look round and tell us can you remember the face of any one in the boat?—No, I do not, only the last one.

Look round and see if you see him?—I do. (The witness here identified the witness Buckley.)

Have you any doubt that that is the man?—No; I am sure he is the man.

They all scattered then?—They all went ashore.

The CHIEF BARON (to the prisoner.) Can you suggest any question to ask this witness?

PRISONER. No, sir; I will only remark that it is peculiar that the only person the man can identify is the so-called informer.

GEORGE JONES, examined by Mr. MURPHEY, Q. C. :

On the 1st of June last were you stationed as a coast-guard at Helvick?—Yes.

Do you know the man Patrick Whelan?—I do.

Do you know a fishing-boat belonging to him?—Yes.

On that day did you see his boat passing Helvick station?—Yes.

At what hour?—Between eleven and twelve o'clock.

When passing the station could you say who were in her?—Only the fishermen.

Did you see where she put into the coast?—Yes.

About how far from Helvick station?—About three miles.

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Did you lose sight of her from the time she passed the station until she put into the coast?—No, sir.

When she put in did you see any persons get out of her?—Yes, between thirty and forty men.

Did you see what they did after landing?—Yes; they were putting on something like their shoes, and brushing themselves up.

Where did they go to then?—Up to the cliffs, to a place called Breen.

Did they go all together?—No; they started in threes and fours. There is a sort of way over there.

Did you keep them in view?—Yes, sir.

They soon got out of your view?—Yes; they soon got out of our view altogether.

The CHIEF BARON. Was any one else with you?—Yes: there were three men besides me.

Are you able to say whether these men were sitting in the boat?—Yes; because they could not be seen. If they were standing up their heads would be above the gunwale.

Were the fishermen standing up?—They were working the boat.

What kind of boat was this?—She was between a six and seven ton boat—a small class hooker.

Had you ever been in her?—No, sir; but alongside of her often.

Are there seats in her?—There are four thwarts about a foot from the gunwale.

If they were sitting that way each could be seen outside the gunwale by you, or might they have escaped your observation?—If the men who were in the boat were sitting down in the bottom of the boat they could not be seen.

If they were sitting upon the seats could they be seen?—Yes.

The CHIEF BARON (to the prisoner.) Do you wish to ask the witness any question?

PRISONER. No.

ANDREW ROCHE, examined by Mr. BEYTAGH:

You are a farmer?—Very little.

You have some land?—Yes.

Do you live at a place called Ring?—Yes.

In the county Waterford?—Yes.

How far is that from a place called Helvick?—About two or three miles.

Is there a place called Ring Church there?—Yes.

Do you remember a day in June last when certain people came to your place?—I do not know any day in the month.

Was it a day in June?—Yes.

Were you working in your farm or garden?—Yes, sir.

Did a couple of men come to you?—Yes, sir.

Just look round and see do you see either of the men?—I do. (The witness here identified the prisoner on trial.)

Was there another man with him when they came to you?—Yes. (The witness here identified the prisoner Nagle.)

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The PRISONER. Allow me to state how this man identified me. He was brought to the prison door and told, "There's Warren. Is that the man?" "Yes, sir." "That will do." That was done by the Crown solicitor.

The CHIEF BARON. Did that happen?—Yes.

Mr. BEYTAGH. What happened?—I was brought to the prisoner and he was brought out.

The CHIEF BARON. Were you asked was that the man?—No, sir.

Mr. BEYTAGH. Did you know him when you saw him?—I did not remember.

The CHIEF BARON. When you saw him at the prison door did you know him?—(This question was not answered.)

Mr. BEYTAGH. When you saw him in the prison did you know him as the man you saw at Ring?—I did not know him at that time.

And when you saw him again did you recollect him as the man you saw?—He shook hands with me.

Where?—In the jail.

The PRISONER. In explanation of that I may say it was but a joke, to show how perfectly indifferent I was.

The CHIEF BARON. Did you know he was the man until you shook hands with him?—No; he went away—I did not look at him.

Do you know him now?—I do.

Do you see the other man there (Nagle)?—I do.

Are these the two men who came to you?—Yes.

Where did you see the other man afterwards?—In the prison.

Did you know him the way you knew the other?—Yes.

Did you know him when you first saw him?—I did.

How did you know the one and not the other?—Because he came out, and then went quick in again.

Were they both brought separately to you?—Yes.

When they came to you at Ring what did they say to you?—How many miles is it to Youghal? I said about twelve miles.

Did they say anything about a car?—They did. He said could I get a car to go there. I said I had a pony myself, and said I would hire it.

Did they ask the price?—Yes.

What did you say?—Five shillings.

Did they agree to give you that?—Yes, sir.

Did you tackle your pony to a car?—No, but to a cart.

Did you at any time observe the state of their dress?—Yes; it was quite wet.

How high up was the dress wet?—About the middle or so.

As you were going along did you say anything to them about where they were?—No, sir.

Did they say anything about being at sea?—They said they were fishing and the ship took fire, and then a vessel going to England picked them up.

How did they get out from their boat did they say?—By a fisherman's boat.

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How did they get out of the boat?—She came into the harbor and struck the strand.

And they jumped out?—Yes.

The CHIEF BARON. Do not ask him the questions in that way.

Mr. BEYTAGH. What did they say about how they got out of the fisherman's boat—thath they jumped out into the water?—Yes.

The CHIEF BARON. I must beg of you not to lead him in that way.

Mr. BEYTAGH. How far did you go with them on the cart?—To Youghal.

Did you come to the bridge?—Yes.

Did you go on the bridge?—Yes.

Did anything happen there?—Yes.

What happened?—They were taken.

Who took them?—A policeman.

Were you taken?—Yes.

Do you know the name of the constable who took you?—No.

Mr. BEYTAGH. I wish to ask your lordship did you take down that the reason he did not know Warren was that he was taken away suddenly.

The CHIEF BARON (to witness.) Whether you recollect this man in the jail or not, are you able to swear that the two men who came to you and went upon your cart were the two men who were taken by the constable on the bridge?—Yes.

Was any part of their dress wet when they asked for the cart, and were they the same men who came to you with part of their dress wet, and asked for the cart?—Yes.

The PRISONER. He swore on the table he did not know me in Kilmainham. He swore deliberately he did not know me when he saw me in Kilmainham after being brought to the cell door and told we were the men.

The CHIEF BARON. What he now says is, whether he knew you or not, two men came to him in the field with their clothes wet, and he brought them to Youghal, and they were taken by the police, and they were the same two men.

The PRISONER. If you analyze his evidence as you did that of Gallagher you will find it is made up to order, and supervised by the Crown solicitor also.

Police Sergeant JAMES NORRIS, examined by the ATTORNEY GENERAL :

Do you remember the 1st of June last ?—I do.

Where were you stationed on that day ?—In the town of Youghal, county Cork.

Were you on the Youghal bridge that day ?—I was.

Did you meet any vehicle coming over the bridge ?—I did.

That is the bridge over the Blackwater ?—Yes; about a mile from the town of Youghal.

In which direction was that vehicle going ?—It was going in the direction of Cork, apparently from Waterford.

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How many were in the cart ?—There were two men, and a man driving.

Do you see in court either of the two men ?—(The witness here looked round the court and said that the two men in the dock were in the cart, and the third man was driving.)

Did you see the man who was driving the cart ?—I did. I heard his name. (The witness here pointed to the previous witness, and said, That is the man, Andy Roche, who was driving the cart.)

Did you do anything when you met the cart ?—Yes, I stopped it.

Did you observe anything about the clothes of the men in the cart ?—Yes; I observed that they were wet and sprinkled with sand.

Did you say anything to them ?—I did.

What did you say ?—I asked them how far they had come; the man holding the paper (the prisoner Warren) said they came from Dungarvan.

Did you ask him any other question ?—I asked him where he belonged to, and he said to Cork.

Did you ask him anything more ?—I asked him his name, and he replied that it was John Donovan.

Did you ask the second man what his name was ?—Yes, and he said William Palmer.

Did you ask the man who gave his name as William Palmer any other question ?—Yes, I asked him whether he also belonged to Cork, and he said yes.

Did you then make any other observation ?—I did; I made some observation about the appearance of their clothes.

Do you recollect exactly what they said ?—I cannot recollect.

When you made that observation was anything said either by Palmer or Donovan ?—Yes. One of them, I cannot say who positively, said they were out on a fishing excursion, and that their vessel took fire, and they were taken off by a vessel or boat, and they had to land in a fishing boat.

Did he say anything more ?—No, except when I asked a question.

Were they both present ?—They were. I asked whether the vessel was a brig or a schooner, and Donovan said, "No, a brigantine."

The CHIEF BARON. Did you mention what vessel you were inquiring about—whether the vessel they were fishing in or the one in which they came up ?—I don't know, my lord, whether they understood clearly, but I intended to ask them what description of vessel took them off.

The ATTORNEY GENERAL. After that conversation what then occurred ?—I then said that I was a constable of police.

The CHIEF BARON. Were you in regimentals ?—I was not in regimentals. I said I had an intimation of a party having landed at Dungarvan on that morning under suspicious circumstances, and that I should take them into custody, and that they should go with me to the police-barrack: and they said "very well."

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The ATTORNEY GENERAL. What did you do then ?—I then arrested them and proceeded to search them.

Did you arrest Roche, the driver ?—I did not.

What did you do with him ?—He came with them to the police-barrack; I searched them on the bridge to ascertain whether they had any arms about them.

I believe they had none ?—They had none.

Did you make any further search when you arrived at the police-barrack ?—I did; I searched the prisoner who gave his name as Donovan, at the police-barrack. I found on him a shirt collar, a small scarf and scarf-pin, and three or four half-crowns.

Nothing else ?—Nothing else that I remember.

Did you then search the man in the dock who gave his name as Palmer ?—Yes.

What did you find on him ?—I found articles of dress—some shirt collars.

Have you got the shirt collar?—I gave it up to my officer.

PRISONER. On the part of the prisoner Nagle, I protest against his case being brought forward on my trial for the purpose of influencing the jury against me.

The **CHIEF BARON.** The case against you is that you were a confederate in one common conspiracy in which Nagle was a party, and the law is that when the existence of the conspiracy is once established, the acts of one conspirator can be given in evidence against another. That is the state of the law, and that law also prevails in America.

The **ATTORNEY GENERAL.** What else did you find on Nagle besides articles of dress?—I found a pocket-book containing a sovereign, a bunch of small keys, and articles that he had for dressing—a hair-comb and hair-brush—and papers with pencilling on them.

(Paper handed to witness.)—Was that one of the papers you found?—That is one of them.

Is it in the same state in which you found it?—Yes, except the initials on it, and these marks I put on it, and the writing in ink, which was put on by my officer in my presence.

The original was all in pencil?—Yes.

And it is now in the same state in which it was then?—It is.

(Another paper was handed to witness, who said that he also found it on him, and that it was in the same state as when he found it, except as to the writing in ink. The pencil writing was the same as before. Another paper was then handed to witness, who said that he also found this paper on the man who gave his name as Palmer.)

Is that in the very same state as regards the pencilling?—Yes.

Did you find anything else?—Nothing else.

Where did you leave the prisoners then?—At the police-barrack.

The **ATTORNEY GENERAL** then said he had no further questions to ask the witness.

The **CHIEF BARON** then addressing the prisoner, said: The acts of one conspirator, if

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they are acts in furtherance of a common design, not otherwise, are evidence against all the conspirators, and if you wish to ask the witness any questions, you can do so.

PRISONER. I have no question to ask, my lord, but that is a very novel idea.

The **CHIEF BARON.** It is a long-established law, and prevails in America as it does in England and Ireland.

The court then adjourned to next (Friday) morning.

FRIDAY, November 4, 1867.

The court sat at ten o'clock a. m., this day, when the examination of witnesses for the prosecution was resumed.

The prisoner said: My lord, before you hear any more evidence, I would suggest some discrepancies between the direct evidence of Buckley and his informations which were given in Mount Joy prison.

The **CHIEF BARON.** I will recall Buckley for the purpose of examining him. I intend asking him some questions which appear to me to be proper for me to ask him, on your behalf, as you are not defended by counsel. I intend doing that at a subsequent period of the trial, and if you would, in the mean time, point out what you wish to have asked, it would perhaps be more convenient to do so then.

The **PRISONER.** That will answer better, my lord.

The **CHIEF BARON.** Take a note of what you desire to have asked on his examination.

BERNARD BURKE, recalled and examined by the **CHIEF BARON**:

You are one of the coast guard of Streedra?—Yes, my lord.

Were you long stationed there?—Two years.

Did you know Gallagher, the pilot, before the occasion of his having been engaged in this vessel?—No.

Do you know whether or not he was a pilot?—I did not know him at all.

JOSEPH CLARKE, recalled and examined by the **CHIEF BARON**:

You are one of the Streedra coast guard?—Yes, my lord.

How long were you at that station?—Three years and a half.

Did you know anything of Gallagher before this occurrence?—No.

Did you know of his having been a pilot before that?—No.

The **PRISONER.** My lord, I wish to know something of his character—whether he was ever charged with stealing on shipboard.

The **CHIEF BARON.** I will ask Gallagher himself that.

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(To the witness.) How long have you known Gallagher?—I knew him for several years. What has he been at before?—He was at sea.

What was he doing at sea?—Fishing.

Anything else?—No.

Did you know him to have acted as a pilot before this occurrence?—Yes; he was a pilot.

Has he "pilot" marked on the sails of his vessel?—He has.

Can you read or write?—No.

Is he known there as a pilot?—He is; he is a pilot.

I am going to ask you another question ; you can answer it or not, as you think fit. Were you ever a Fenian ?—No.

JAMES PATTEN, examined by the **ATTORNEY GENERAL** :

You are a head constable, I believe ?—Yes.

Where are you stationed ?—At Killybegs.

That is in the north of Donegal, I believe ?—Yes.

Do you know Michael Gallagher ?—I do.

What is he ?—A pilot and fisherman—a pilot.

Is he known by any name as a pilot ?—He is known of the Teelin pilot.

The **CHIEF BARON**. What is that ? Is that the name of his place, or a place ?—That is the name of the place he lives in.

The **ATTORNEY GENERAL**. You know he acted as a pilot ?—Repeatedly I saw him act as a pilot.

Sub-constable **THOMAS IRWIN**, examined by the **SOLICITOR GENERAL** :

Are you a sub-constable ?—Yes.

Where are you stationed ?—At Dungarvan.

Do you remember the 1st of June last ?—I do.

Did you arrest any men on that day ?—I did.

Look around, and see if you see any of the persons you arrested.—I don't.

Did you see Buckley examined here yesterday ?—I did.

Was he one of the men you arrested ?—He was.

Where did you arrest them ?—I arrested them on the road leading from Dungarvan to Youghal. There are several roads, but this is the most easterly road, and the most convenient to the bay.

Where did you arrest them ?—At a place called Ballywilliam Cross.

At what o'clock in the day did you arrest them ?—I think it was about half-past three o'clock in the day, as near as I can go.

Did you arrest any other persons with him at the time ?—Yes ; I arrested a man who gave his name as James Lawless.

The **CHIEF BARON**. Was he with Buckley ?—He was with Buckley.

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The **SOLICITOR GENERAL**. Did you arrest any other persons at the time ?—Yes ; I arrested another man who gave his name as Augustine E. Costelloe.

The **CHIEF BARON**. Was he also with Buckley ?—Yes, my lord.

The **SOLICITOR GENERAL**. Would you look around now, and see if you see either of the other men now ?—I see Buckley.

Did you see Costelloe yesterday in court ?—I did not. [The prisoner Costelloe was here placed at the bar.]

Look around now and see if you see any one you know.—That is the man who gave his name as Augustus E. Costelloe.

Who was the magistrate you brought these men before ? Were there any magistrates with you at the time of their arrest ?—Yes ; two magistrates were with us.

Who were they, or what are their names ?—Mr. Redmond, the resident magistrate, and Mr. Henry A. Fitzgerald, of Seaview.

Did you see Mr. Redmond here ?—I did.

Were the men you arrested on the road or off the road, or where did you find them ?—Buckley, Costelloe, and Lawless were on the road.

What did you do with them when you arrested them ?

The **CHIEF BARON**. In what way were they going when you arrested them ?—They were going in the direction of Youghal, my lord. We took them up on a car and drove up to Kelly's Cross police barrack, and gave them in charge to the police, who had a number of others in custody at the same time.

The prisoner, in reply to the chief baron, said he did not intend to ask the witness any questions.

MICHAEL GALLAGHER, recalled and examined by the **CHIEF BARON** :

I wish to ask you a question which you need not answer—you are not bound to answer it—if you don't like. Were you ever a Fenian ? No, I never was.

Had you anything to do with the rebellious proceedings that occurred in this country this year ?—No.

The **CHIEF BARON** (to the prisoner.) Do you desire that any question should be put to the witness ? You said something of his character. That cannot be asked of another, but it can be asked of himself. You are entitled to ask him of his own character, but you cannot ask him of another man's character.

The **PRISONER**. I would wish to ask him if he was ever charged with stealing a pair of boots on shipboard.

The **CHIEF BARON**. Were you ever charged with stealing a pair of boots on shipboard ?—Never in my life, or anything else in my life, since I was born.

The **PRISONER**. His denying that question so pointedly, I need not ask him any other question.

JOHN JOSEPH CORYDON, examined by the ATTORNEY GENERAL :

I believe you were an officer in the federal army ?—I was.

The CHIEF BARON. In the northern States ?—Yes, my lord.

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The ATTORNEY GENERAL. What rank had you in that army ?—Lieutenant.

Did you ever become a member of the Fenian confederacy in America ?—I did.

At what time ?—In the summer of 1862.

Did you take an oath ?—I did.

What was the nature of that oath ?—To establish an Irish republic in Ireland.

The CHIEF BARON. Where did you take the oath ?—In America.

In what year was that ?—In 1862.

The ATTORNEY GENERAL. In the State of Virginia, I believe ?—Yes.

Were you acquainted with the organization of the ranks in that confederacy ?—I was.

What were the different ranks ?—There was no distinction in America, but in Ireland there was a distinction of ranks.

The CHIEF BARON. No distinction of ranks you say in America ?—No.

The ATTORNEY GENERAL. Were there any offices in the confederation held by Fenians ? Yes.

What were the offices ; mention some of them ?—The leading man in America was John O'Mahony.

What ranks did they hold ?—Captains and colonels.

Were there centres ?—Yes.

What else was there ?—Sub-centres and State centres.

Anything else ?—Well, I couldn't say. There were centres, and State centres, and delegates. State centre was the highest position held in the State.

How long did you remain in the federal army ?—Until 1865.

Was that at the time the American armies were disbanded ?—Yes.

Where were you at that time ; what part of America were you in ?—New York.

During the time you were in New York, did you attend any Fenian meetings ?—Several.

Where in New York did you attend these meetings ?—At headquarters, and at 814 Broadway.

The CHIEF BARON.—Where were the headquarters ?—At one time in Chatham street, at another time in Duane street, and latterly in Union square.

The ATTORNEY GENERAL. At the time they were in Duane street, who were the principal members of the Fenian confederacy ?—John O'Mahony was the leading man in America, and James Stephens in Ireland.

Did you meet O'Mahony at Duane street ?—Yes.

Do you remember the month of August, 1865 ?—I do.

Did O'Mahony send you anywhere in that month ?—He sent me to Ireland.

The CHIEF BARON. Were you sent by O'Mahony ?—I was.

The ATTORNEY GENERAL. To whom did O'Mahony send you ?—To James Stephens.

Did you go to Ireland ?—I did.

To Dublin ?—Yes.

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Did you attend any Fenian meetings in Dublin when you arrived here ?—I did.

Tell me the names of some of the persons you met at the Fenian meetings in Dublin ?—I met James Stephens, Brophy, Kickham, and Luby, and several more there.

Did you meet a Fenian of the name of Colonel Kelly in Dublin ?—Frequently.

What was his Christian name ?—Thomas.

Did you get any orders in Dublin from Colonel Thomas Kelly ?—I did.

What were these orders ?—On the 19th November I received orders, I would say despatches, from him to O'Mahony, in New York.

To take to New York ?—Yes.

Did you take these despatches to New York to O'Mahony ?—I did.

Were you then sent back to Ireland from New York ?—I was.

The CHIEF BARON. By whom ?—By O'Mahony.

The ATTORNEY GENERAL. Where was Stephens when you left Ireland ?—He was in jail.

Did you hear anything at Fenian meetings about Stephens after you returned to America ?—I did.

What did you hear ?—I heard he was out of jail.

The CHIEF BARON. You heard it at a Fenian meeting, you say ?—Yes, my lord.

The ATTORNEY GENERAL. What were you sent back to Ireland for, and who sent you back ?—O'Mahony sent me back with despatches.

For whom were these despatches ?—For Stephens, or Colonel Kelly, if I could not see Stephens.

To whom did you deliver these despatches ?—To Colonel Kelly.

Did you then get any despatches from Colonel Kelly ?—I did ; the night after I arrived I received despatches from Colonel Kelly to proceed back to New York.

The CHIEF BARON. And you went off again to America ?—Yes, my lord.

With the despatches ?—Yes, my lord.

The ATTORNEY GENERAL. I believe you returned afterwards to Ireland before September, 1866?—I did.

Were you employed by the government in September, 1866?—I was.

To give information with regard to the Fenian conspiracy?—Yes.

Where were you in September, 1866?—Liverpool.

Did you attend any Fenian meetings in Liverpool?—Several.

How long did you remain in Liverpool?—Until February, 1867.

What time of the month was it?—Some time about the 17th, I think.

Did you get any orders from the Fenian leaders in Liverpool as to your movements in February, 1867?—Yes.

What were these orders?—We were to come from England to Ireland to be ready for a fight.

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The CHIEF BARON. From whom did you receive these orders?—From the acting leader then in Liverpool, whose name was Beecher, the deputy of Colonel Kelly.

The orders were to come to Ireland?—Yes, and to remain there until we would receive other orders.

The ATTORNEY GENERAL. And did you come to Ireland?—I did.

The CHIEF BARON. When was that?—About the middle of February, 1867.

The ATTORNEY GENERAL. Under whose orders were you placed in Ireland?—Myself, and all the other Americans were lodging in different parts of Dublin.

Under whose orders were you placed?—Colonel Kelly, McCafferty and others, and all the leading men.

Was McCafferty in Dublin then?—He was not at that time; and he was arrested a few days after I came.

That was about the 24th of February, I believe?—I am not sure.

Did you get orders after you came to Ireland from any person here?—A week before the rising.

From whom did you get the orders?—From Godfrey Massey and Edward Duffy.

What were the orders you got from them?—They ordered me to go to Millstreet, in the county of Cork, and see the centre of that town.

What was his name?—Kearney; and he would see that I would get to Kearney to Colonel O'Connor.

And when you saw him what was to be done?—I was to tell him of the rising that would take place on the 5th March.

What was to be done when the rising would take place?—My instructions were to take part with O'Connor in the rising.

What plan was to be adopted?—A concentration of the forces, to tear up the rails, and break banks.

Where was it arranged that this rising should take place?—In London.

Where in Ireland was it to take place?—In three provinces—Leinster, Connaught, and Munster.

You said that Colonel Thomas Kelly was to have commanded?—He was the leading man.

Did you know another Colonel Kelly in America?—I did; Colonel James Kelly.

The CHIEF BARON. What rank was he?—Lieutenant colonel.

Was he lieutenant colonel in the army?—Yes, in the Irish brigade.

Did you know him yourself personally?—I did, my lord.

The ATTORNEY GENERAL. Did he hold any rank in the Fenian conspiracy?—He did. He was colonel; he was a member of the examining board; he was president of the examining board.

What do you mean by the examining board?—Five or six military men examining young fellows to see if they were competent to come over here.

Do you know the prisoner?—I do.

How long have you known him?—Since 1861.

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What is his name?—John Warren.

Where did you first meet him?—In New York.

What was he when you first met him?—He was recruiting for his company as captain.

The CHIEF BARON. In the American army?—Yes, my lord.

The ATTORNEY GENERAL. Was he a captain?—He afterwards was.

Did he continue a captain in the American army?—Yes; for about a year and a half, or perhaps a little better.

At the end of the year and a half what happened?—He was discharged the service.

The CHIEF BARON. Discharged?—Yes, my lord.

What time was that?—About September.

The ATTORNEY GENERAL. 1862 or 1863?—1862.

Did you know the prisoner to be a Fenian?—Yes, I did.

The CHIEF BARON. When first?—In 1862.

The ATTORNEY GENERAL. When he was in the American army?—Yes.

The PRISONER. I protest, my lord, against the introduction of matter connected with my conduct in the American army.

The CHIEF BARON. I cannot, in point of law, reject the evidence of the circumstances under which you were at the time, or about the time, you were alleged to be a member of the Fenian confederacy.

The PRISONER. I wish you would then ask him what was my character as a soldier and a gentleman in the American army.

The ATTORNEY GENERAL. What was the prisoner's conduct as a soldier and a gentleman in the American army?—Very good.

Had he any Fenian employment in the American army?—No.

After he left the army did he acquire any position in the Fenian organization?—Yes.

What was that position?—That of State centre in the State of Massachusetts.

In what year did he hold that office?—In 1863.

Did you see him in New York in 1865?—I did.

Where did you meet him in New York that year?—In Chatham street, or rather at the corner of Chatham street, on the steps of a hotel.

Did you meet him in Duane street?—Yes.

What party of Fenians did he belong to?—At first he belonged to the Stephens and O'Mahony party, and until deprived of the State centrship of Massachusetts.

Did he continue to belong to the Stephens and O'Mahony party after that?—No.

What party did he join then?—The Roberts party.

The CHIEF BARON. Were there two parties in the Fenian organization?—Yes, my lord; there was a split.

The ATTORNEY GENERAL. Was he engaged in any position or employment when he was in New York?—No.

Was he connected with any newspaper?—Some time before the war broke out—about 1859—he was; he, in company with—

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The CHIEF BARON. You first knew him in 1862?—Yes; I heard he was writing for this paper.

The ATTORNEY GENERAL. Did you hear it from himself?—Yes; I used to get this paper.

The CHIEF BARON. He wrote, you say—for what paper?—For the Irish Messenger.

Was that a Fenian paper?—No, it was not.

The ATTORNEY GENERAL. Was he in any position when he was head centre for the State of Massachusetts?—I was told he kept a grocer's shop, but I am not sure of it.

Had you any conversation with him on Fenianism?—Oh, yes.

Did you know a newspaper called the Daily News in New York?—Yes.

Did you know he had anything to do with that paper?—He was a reporter for it for some time.

The CHIEF BARON. When was that?—In 1855, I think.

He was a reporter for it for some time?—Yes.

To the prisoner: Would you suggest anything I should ask this witness?—No. There is one discrepancy between his evidence and his informations. He swore in his direct evidence that I was State centre for Massachusetts in 1863, whereas in his informations he said 1865.

WITNESS. I beg your pardon.

The PRISONER. I suppose it was written in mistake, like Gallagher's informations.

WITNESS. There were two State centres since 1863 when he was State centre.

The ATTORNEY GENERAL. The witness says in his informations that the prisoner was a prominent member of the Fenian organization in the American army. He also says, in 1865 I met him in Duane street, he was then head centre. To the witness: How long was he State centre for Massachusetts?—There were two State centres since he was State centre—Daniel Donovan, who was over here in Ireland, and the other, who is now acting as State centre in Massachusetts, a man named Doody.

Mr. Justice KEOGH. He says it was in 1865 in his informations.

The ATTORNEY GENERAL. And he says it was 1863 in his evidence.

The PRISONER. I call your lordship's attention to his original informations.

The ATTORNEY GENERAL. The prisoner is quite right, my lord.

The CHIEF BARON (to the witness.) What do you say now?—Twice he was turned out of the position of State centre; the man that got it then was Daniel Donovan; he occupied it in 1864, and when his year of office was up, the next man was Doody, who is now occupying the position of State centre of Massachusetts.

The ATTORNEY GENERAL. That is since 1864?—Yes.

The CHIEF BARON. When was Doody appointed?—In 1865.

The ATTORNEY GENERAL. Is he State centre now?—Yes; he is continued.

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The CHIEF BARON. Do you recollect that when you swore your informations you said 1865?—That is a mistake. I said I met him in New York in 1865.

What do you say is a mistake?—I think it is the date of when it was taken.

Was it that you mistook the date, or that it was taken down in error?

The PRISONER. Of course it is all a mistake of the transcriber; the witness made no mistake at all. He knew from some source, my lord, that I was going to ask him the question.

The CHIEF BARON. He was then the head centre for Massachusetts?—Yes, my lord.

When did you meet him in Duane street?—In 1865.

Was he then occupying the position of head centre?—No; for he was then connected with the Roberts party.

You were right, then, in saying that you met him in 1865?—Yes; he was then writing for the Daily News.

You say that he was then a head centre for Massachusetts; that could hardly have been a mistake of the person who took it down, as it referred to the time you met him in New York?—He was not the head centre in 1865—Doody was; there were two parties, the Roberts and O'Mahony parties.

The CHIEF BARON (to the prisoner.) Do you suggest any other questions to be asked of the witness?

The PRISONER. I will ask him a few questions as to my recruiting in New York. Are you sure I recruited in New York?—Yes; you recruited some in New York, and some in Charleston.

Where in New York did I recruit?—In David's island.

Where did I recruit—had I a tent, or room, or office there?—Yes; you had a recruiting tent in City Hall Park, New York.

Was I associated with any one?—Yes; a great many officers of the regiment—Captains Condon, Welsh, O'Neill, and almost all the officers of the regiment except those whom it was necessary to keep in David's island.

Don't you know that I was a resident of Boston, and that I arrived from it at New York on the 14th August, 1861, with 101 men whom I had recruited at Boston? I never recruited in New York, nor did I ever attend a Fenian meeting there in my life.—He was a captain in my regiment, my lord, and he did not recruit in New York.

I arrived from Boston, where I resided, at New York, with a company of 101 men, which I recruited in Boston, on the 14th August, 1861. I never recruited in New York; and I will make it a point to write to the governors of these States to show that I never recruited men either in the city or the State of New York.

The CHIEF BARON. That is of no use to you at present. To the witness: Did he recruit in the places mentioned by you?—He did, my lord; there were three companies recruited by him in Boston; but as a good many of them deserted on their way to New York, he had to get his companies recruited in New York.

What you say, then, is this: Is it that he brought some of them from Boston, and recruited others in New York?—Yes, my lord.

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The PRISONER. Permit me, my lord, to introduce a witness on this question.

The CHIEF BARON. By-and-by you can do that, as soon as the Crown closes their case. I cannot receive any witnesses from you until the case from the Crown is closed; then you will have every opportunity of doing so. Be good enough to have your witnesses in attendance, so as not to have any delay.

The PRISONER. My witness, my lord, is Mr. Nagle, a member of the same brigade. He is a prisoner; but if he is produced he can prove that I neither recruited in New York, nor had I a tent there.

The CHIEF BARON. He is one of the parties against whom an indictment was found, and, as a rule, the law prevents a party in such circumstances from being examined. I am afraid you can't examine him.

The PRISONER. I simply raise the question for the sake of security. As I said yesterday, I ignore the jurisdiction of this court—I don't recognize it.

The CHIEF BARON. That is no matter. What you said yesterday will not prevent me hearing any suggestion you have to offer.

The PRISONER. I know that, my lord.

Acting Sergeant FRANCIS SHERIDAN, examined by the ATTORNEY GENERAL:

You are an acting sergeant of police?—I am.

You remember the 5th of March last?—Yes.

Where were you then on duty?—I was on duty at Milltown, in the suburbs of Dublin. I was sergeant then.

How many constables had you with you?—There were three.

Where did you patrol that night?—We patrolled down Milltown road and through Mill town village, in the county of Dublin.

Did you meet any body of men on that night?—Yes; about twelve o'clock one thousand men came armed with rifles, fixed bayonets, pikes, and revolvers.

Were they marching when you met them?—They marched four deep, in military array.

Had they anything with them?—They had a van in front, and an outpost in charge of it.

Was there any person apparently acting as commander?—Yes; there was.

What was his name?—Lennon.

Did you hear him give any orders to that party?—Yes; he gave orders for the men to stop, and they made prisoners of us, and disarmed us.

Were you in uniform at the time?—The men and myself were in uniform, and on duty.

Had you arms?—Yes, we had swords and revolvers.

Did you do anything with these arms?—They disarmed us by the orders of the man in command.

Where were you placed when you were disarmed?—In the centre of the party with rifles and pikes.

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They had rifles and pikes?—Yes, sir.

Where did the party move who had you placed in the centre?—They proceeded across Milltown bridge, through Dundrum and Windy harbor.

Where did you proceed from Dundrum?—We went to a place called Old Connaught. We went first from Dundrum, and then to Stepside.

Is Stepside in the county of Dublin?—It is, sir.

The CHIEF BARON. Old Connaught is in the county of Dublin?—It is in the county of Dublin, my lord.

The SOLICITOR GENERAL. Did you hear Lennon give any order to the men who were in the party?—Yes, he ordered them to proceed to the front of Stepside police station, and then they made an attack on the station.

He ordered the riflemen to come forward?—Yes, in front of the constabulary police barrack.

Was this when you had reached Stepside?—Yes, sir.

What did you observe done then?—A number fired into the front of the barrack, and demanded of the constabulary in the barrack to surrender in the name of the Irish republic.

Did the men surrender?—The party outside broke the windows and put straw in through them to burn the police out, when they would not surrender in the first instance.

Did the constabulary come out?—The insurgents got a sledge and broke in the door.

What occurred when the door was broken?—The constabulary were brought out from the barrack, and made prisoners along with us.

How many?—I believe four men or five; I think four men and a sergeant.

What was done then?—I saw the party made prisoners of. The party who made prisoners of the constabulary put on the constabulary accoutrements.

What do you mean by accoutrements?—Knapsacks and belts.

Did the party move on then?—They took the rifles out of the barrack and moved on in the direction of Bray.

Were the constabulary who were taken out of the barrack taken away with you?—Yes, sir.

Did they go into Bray?—They stopped at a place called Old Connaught, this side of Bray. They then sent a party to the town of Bray to know whether they could proceed there, and word came back that they could not proceed, as the military were coming on the train from Dublin. It was so conjectured among themselves; we heard them say so. They then returned to Glencullen constabulary police station. The riflemen were ordered in front of the station. They demanded the constabulary in charge of the station to surrender in the name of the Irish republic. The constabulary refused, and then the party outside fired into the barrack.

Who fired in?—A number of the insurgents outside.

What did the constabulary who were inside do?—They fired out upon them.

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Was any one hit or wounded?—Yes; there was one man shot convenient to me; one of the insurgents was wounded from the barrack.

What was done when the man was wounded?—We were ordered forward to be exposed to the fire; we were put in front of the fire from the barrack. Some of the insurgents were behind us.

The CHIEF BARON. Were there not any of them between you and the barrack?—No, my lord.

Were you put between them—between the wall and the police station?—Yes, my lord.

The SOLICITOR GENERAL. What was done with the man who was wounded?—He was ordered by the man in command to be taken to the van that had ammunition in it.

What became of the men in the barrack in the end?—The sergeant who was along with us was compelled to go over to the window and speak to the constable in charge of the station.

The CHIEF BARON. Was that the Milltown man?—No; the Stepside constable, my lord. He was compelled to go over where?—To the barrack window, and to speak to the constable in charge inside.

To say what?—That if he would surrender the arms and ammunition in the barrack he would give the prisoners he had outside in exchange for the arms and ammunition.

The SOLICITOR GENERAL. Did they do that?—They did. They gave the arms and ammunition and other accoutrements belonging to the constabulary from the barrack.

And were you released then?—We were, sir.

The CHIEF BARON. Prisoner, can you suggest any question to ask this witness?

PRISONER. No, my lord. I don't know any of these movements he talks of. I never minded them, my lord.

The CHIEF BARON. Mr. Attorney General, have you any further parol evidence?

The ATTORNEY GENERAL. No, my lord, we close as regards parol evidence, but we wish to put in some documents.

The CHIEF BARON. It will be better to postpone doing that until I have put some questions to the witness Buckley.

The ATTORNEY GENERAL. Very well, my lord.

DANIEL J. BUCKLEY recalled and further examined:

The CHIEF BARON. Now, prisoner, if there is any question you wish to suggest that I should ask the witness, or if you wish to ask him any question yourself, you can do so. Perhaps it is better for you to wait until I have put the questions which occur to me to ask him, but you may do so now if you prefer it.

The PRISONER. I presume that the same discrepancies in his evidence have occurred to your lordship's mind as have occurred to me, and I would sooner wait till your lordship has done.

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The CHIEF BARON. I will ask the witness some questions as to points which occur to me as desirable to inquire into, and you can afterwards put any questions to him that you think right. To witness: Have the goodness to state again the oath which you took on becoming a Fenian.—Not to divulge the secrets connected with the organization, as well as not to divulge anything connected with the expedition.

Was that the form of the oath?—That was the form of it.

Do you remember what you swore in your informations? I believe you swore one information on the 12th September, and another on the 10th October—did you swear any others besides those?—I believe those are the only informations.

The ATTORNEY GENERAL. He made only two, my lord; but the original information was resworn by him in the presence of the several prisoners.

The CHIEF BARON. In your information of the 12th September you mention that the oath administered to you was that you should obey those who would be placed over you, and that you would not divulge the secrets of the expedition?—That did not belong to the oath.

What did not belong to the oath?—That I would obey those placed over me; that did not belong to the oath taken by me.

Then that was not part of the oath?—No, sir.

Where was it you met the parties who accompanied you on the expedition?—Canal street. I went to Broadway first, and afterwards to Canal street.

What did you mean by saying in your information that you had to go down to Grant street?—That was to take the steamer there.

But you did not embark from Grant street?—We took the steamer at Canal street.

Is that near Canal street?—The wharf is there.

Is Grant street near Canal street?—I never said Grant street; I made no reference at all to Grant street; it was Canal street, not Grant street.

In your information you state that Grant street was the place?—That is a mistake.

PRISONER. I am very well acquainted in New York, and it contains no such street as Grant street.

WITNESS. I did not say Grant street; I said Canal street.

The CHIEF BARON. I observe in your information you do not mention anything about Colonel Phelan, Colonel Devan, Colonel O'Doherty, nor about James Lawless?—No, my lord.

How did you happen not to recollect those persons?—Not being well acquainted with them, and having to recollect some forty odd names.

You said in your evidence here that three colonels went on shore before the wounded men left the ship?—Yes.

And you said that two of the colonels went on shore with Burke?—Yes.

Then there were five colonels in all went on shore?—No, only four.

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How did it happen you did not recollect the names of those persons when making your information?—In giving that information I did not recollect those names.

Did anything occur to make you recollect them afterwards?—Yes, sir.

What occurred?—Simply getting some paper and writing down those names to recollect them.

Did you receive any information as to who they were before you wrote down their names on the paper?—None, sir.

Was it after you made your information that you recollected those names?—Yes, sir.

Was your memory refreshed in any way?—Yes, sir; I felt a great deal excited on the occasion of giving that information.

How was your memory refreshed?—By having more time to look over them.

Had those men been arrested at the time you gave your first information?—Yes, sir.

Did you know they were arrested?—I did.

Did you know who they were?—Yes, sir.

Did you learn their names?—Oh, I knew their names long before that time.

What I ask you is, did you learn the names of those persons who were arrested before you gave your information?—I had known them before that, sir.

Attend to the question. Did you know who were arrested at the time you gave your first information?—I did, sir.

Did you know them by name—who they were?—I did, sir.

And, if you did, how did it happen that among those who were arrested and named to you there should have been a number of persons whose names you forgot?—They were not all arrested.

The ATTORNEY GENERAL. The party were not all arrested, my lord; Doherty, Shea, Devan, and Phelan were never arrested.

PRISONER. My lord, the witness was in the same prison with us, and exercised in the same yard up to the 12th of October, when he gave his information.

The CHIEF BARON. I am speaking now of the persons whom he did not name in his information, but whom he named yesterday.

PRISONER. Quite so, my lord. I intended to call your lordship's attention to it as a remarkable coincidence.

The CHIEF BARON, (to witness.) There is another point; you stated in your evidence yesterday that the arms which were on board were packed in large sized boxes; that there was a Spanish name upon them, and that they were placed between decks; you also stated that there was ammunition in one of those boxes which was opened, containing about a million and a half of cartridges, as you understood, and you then stated, after describing the artillery, that the cases in which the arms were were opened during the voyage?—Yes.

And that the arms were so placed as to be ready to distribute?—Yes.

And you were asked how they were so placed, and you said they were put in twos and threes, and that they were rearranged in the boxes—in the same boxes?—Yes.

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That was your evidence yesterday. I shall now read what you stated in your information: "We had a quantity of arms on board; I could not say what quantity; they were packed in cases as pianos and sewing machines; they included a quantity of carbines and rifles." In your statement here you said they were revolvers. You then proceed to say: "These boxes were consigned to a firm in Cuba. Many of those cases were opened during the voyage, and the arms packed in smaller boxes." In your evidence yesterday, you said they were opened, and the arms laid in twos and threes in the same large boxes. In your information you say they were opened and the arms packed in smaller boxes; how do you reconcile those two statements?—My lord, I stated in my evidence yesterday, that the arms were placed in two boxes, one outside of the other, for more safe-keeping; on repacking and rearranging they were only left in the inner box.

PRISONER. The witness also said in his first information that he did not know the quantity of arms on board; in his evidence yesterday, he swears to 5,000 at least.

The CHIEF BARON. How do you reconcile that?—In making reference to the quantity yesterday, I merely intended to be understood as stating far short of the number of arms actually on board. It is true, I did not know the exact quantity.

That is to say, you yesterday merely intended to indicate that there was at least that quantity, but you could not tell how much?—Yes.

Why did you not make any mention of the ammunition in your information?—I did not recollect it at the time.

You say you had opportunities of seeing between decks?—Yes.

How was the ammunition placed between decks—was anything placed under it?—Yes, there were some boxes under it.

Were there any over it?—None over it. There were arm boxes under it.

Was it placed in the part of the ship in which you slept?—No, it was some twenty or twenty-five feet from me.

But you passed through it occasionally?—I passed it often.

How did you happen to forget it when making your information?—The question was not asked of me. There are other things in connection with the expedition that I have not given any evidence of, because I was not asked.

What are those things—do you recollect them now?—Yes, I do, sir.

What are they?—The building of a raft was one.

What about that?—This raft was intended with two other boats to hold the people in case the ship was pursued. These were to be launched, and the ship blown up or set fire to.

Do you recollect anything else?—No, sir.

You mentioned yesterday, that you heard what passed in the cabin between the officers and Gallagher, the pilot?—I only heard part of what passed.

Why did you say nothing of that in your information?—I never thought of that, sir.

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Explain how it occurred. You were describing in your information what occurred with reference to Gallagher; you stated that while in Sligo bay you took a pilot on board, who remained with you some two or three days. At this time you were giving information for the purpose of sustaining a charge against those people; didn't you think it was material in

order to sustain that charge, especially against Warren, against whom particularly you were examined—didn't you think it material to show that Warren was present at the time that oath was administered by force to Gallagher?

The ATTORNEY GENERAL. His information was not made in the first instance against Warren.

The CHIEF BARON. It is headed, "The Queen *vs.* Warren and Nagle," and the caption states "The information of Daniel Buckley, who being duly sworn, &c., &c., in the presence and hearing of the prisoner, John Warren." I am reading from the printed copy of the information furnished to me.

The ATTORNEY GENERAL. This information was originally made on the 12th September; it was resworn on the 10th October, in the presence of the prisoner.

The CHIEF BARON. The one I am reading from is dated the 12th of September.

The ATTORNEY GENERAL. The prisoners were not present on the 12th of September.

Mr. Justice KEOGH [referring to the original information of the 12th of September.] I find that there is no caption to the original information, such as appears in the copy furnished to us.

The CHIEF BARON. Then the copy furnished to us is inaccurate in that respect. (To witness.) In your information of the 12th of September, you stated the names of various officers in the expedition. Now, what I ask you is this: When those persons were named by you as persons whom you charged with being in that vessel engaged in illegal acts, how did it happen that you should not have recollected a matter so material, when you were swearing against them at all—how was it that you forgot a matter so material as the transaction that occurred between them and Gallagher?—My lord, the information given in the first place by me in October—

The CHIEF BARON. No; in September?—Yes, my lord; that information was incomplete; there were many things I did not recollect, and that I could only recollect afterwards when they were brought to my mind.

And this was one of the matters you did not recollect?—Yes.

What I ask you is—can you account or explain how it should have escaped your memory?—When I was only a few days there, I desired the solicitor to come and take my evidence; previous to that I had not allowed my mind to rest on the matter so much as to recollect that.

You then sent for the solicitor, to give information?—Yes.

To give information against the persons that were on board?—Yes.

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How did it happen when you were thinking of what information you could give to the Crown against those persons, you should have forgotten a thing so material?—The same thing happened yesterday; I forgot names yesterday whom I had mentioned in my informations previously.

I am not now speaking of names, I am speaking of a transaction. Were you reminded of that in any way?—No, sir; I was not.

Did you learn the substance of Gallagher's information at all?—No, sir.

At any time?—No, sir.

Did you ever see his information?—No, sir.

Did you ever learn what he stated?—No, sir.

You heard of his having given information?—I did not, till some two weeks ago.

Did you hear two weeks ago what he told?—No; I was told nothing further than that he had made an information.

Did you ever read his information?—No, sir.

Was it ever read to you?—No, sir.

In your information you state nothing of the council which you mentioned yesterday as having been held before their arrival at Sligo, and at which it was determined to attack the town of Sligo?—That I neither recollected, my lord.

You did not recollect that?—No, sir.

Tell me now what it was was determined, or rather what was considered, with reference to going to the Western Islands?—To reprovise the ship there. The captain stated we had one hundred and twenty gallons of water on board, and that that quantity was sufficient to carry us to the Western Islands.

Were they to go to the Western Islands on their way to the United States, or were they to go to the Western Islands and then come back to Ireland?—They were to go to the United States.

What were they to do there?—To lay before the Irish the experience gained in connection with the expedition.

I think you said that Warren agreed to that at first?—No, sir.

I understood you to say he at first dissented, but afterwards agreed?—Yes.

And afterwards he concurred in rescinding the resolution?—Yes.

How did that come about—how did it happen that that was adopted by Warren, who at first dissented—how did it happen that he was induced to forego that determination?—I represented to him the frivolous nature of the entire expedition, and the foolishness of landing in Ireland under the circumstances.

Yes, I know; and you say those representations induced him to acquiesce in the prudence of going back to America!—Yes.

Why did he afterwards change, and decide upon landing?—I don't know, sir.

Did they take any time to discuss the matter before landing was resolved on?—There was no discussion at all; there were only three dissenting voices.

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That is, dissenting to the proposed landing?—Yes.

Who made the suggestion?—Kavanagh.

I think you said he made it suddenly—that he turned round suddenly and asked the men would they follow him if he landed?—Yes, it was done very suddenly.

Were all the men assembled at the time?—The majority were, except two or three of the crew.

Where did this take place—in what part of the ship?—On the quarter-deck.

Was the suggestion discussed before they determined on adopting it?—There was not a word of discussion.

Did they adopt it at once?—Yes, sir.

The CHIEF BARON. Now, prisoner, is there anything you can suggest to me to ask him?

The PRISONER. There is one thing you have omitted, my lord. He stated in his information "I think I am a native of Ireland." In his evidence yesterday he swore "I am a native of Ireland, of the province of Munster."

The CHIEF BARON. That is so. (To witness.) Were you in doubt whether you were a native of Ireland when you swore your information?—I really was, sir.

PRISONER. I wish to refer to another point; I believe your lordship was about to refer to it, but it escaped your memory afterwards; the witness swears in his information: "In Sligo bay we took a pilot on board, and he remained with us two or three days." Gallagher swears he was there only a few hours.

The CHIEF BARON. You are perfectly correct. I did not observe it, I confess. (To witness.) How do you account for that?—I thought at first that he remained on board two or three days, but I was not sure, and I was not willing to allow my affidavit to remain as in the first case, fixing it at three days; I was not willing to substantiate it, and, after considering and looking over the matter, I prefer saying what I can substantiate.

What is that?—That he was one day on board.

You say now he was one day on board?—Yes.

Why did you say three days in your information?—I allowed a doubt; I said two or three days.

The CHIEF BARON (to prisoner.) Is there anything else you can suggest to ask the witness?

PRISONER. Yes, my lord; I have now to suggest the most important point of the whole. Yesterday he swore he was twenty-five years of age. I hold in my hand a certificate of his naturalization, by which he was admitted a citizen of the United States on the 10th of October, 1855, so that, if his swearing be correct, he was then thirteen years of age.

The CHIEF BARON. What age is he stated to be in the certificate?

PRISONER. He must be twenty-one years of age at least, my lord, when admitted a citizen.

The CHIEF BARON. If he were twenty-one years of age in 1865, that would make him now about the age that he stated yesterday.

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PRISONER. He was twenty-one years of age in 1855, my lord; the date of the certificate is 1855.

The CHIEF BARON (referring to certificate.) Yes; you are right. I thought it was 1865.

PRISONER. He must have been twenty-one when he got that certificate, so that he must be at least thirty-three years of age now. It must have been perjury for him yesterday to swear he was twenty-five.

The CHIEF BARON (to witness.) How do you explain that?

WITNESS. I beg your honor's pardon; I said I did not know my exact age, but that I thought I was at least twenty-five.

PRISONER. His evidence was direct, my lord—"I am twenty-five years of age."

The CHIEF BARON. Is there anything else you wish to ask him?

PRISONER. There is nothing else, my lord.

The ATTORNEY GENERAL. There are some documents which I propose to give in evidence.

The CHIEF BARON. I have some doubt as to their admissibility in evidence against the prisoner.

The ATTORNEY GENERAL. Under these circumstances I will not give them in evidence. The case for the Crown then closed.

The CHIEF BARON, addressing the prisoner, said: You are now at liberty to state whatever is proper for your defence, and to offer any evidence in support of it that you are prepared with.

PRISONER. My lord, I simply intended to have produced Nagle to prove that I never, as Corydon stated I did when he first became acquainted with me, recruited in the State of New York, or had any tent in the Park of that city. He also swore that I was State centre

for Massachusetts in 1865. Now he conveniently forgets it. I do not press the point; it is a matter of veracity. I want to show up the man.

The CHIEF BARON. These are matters which I think are of very little consequence to you.

The PRISONER. I withdraw my request, as I believe no respectable jury in Ireland would believe a word he says.

The ATTORNEY GENERAL. I have no objection; the prisoner can produce any witness he likes.

The CHIEF BARON. It is quite immaterial to him. Do you desire to make any statement?

The PRISONER. I had intended at the commencement of the trial, realizing the position I am placed in by the absence of counsel, to have analyzed the evidence of Gallagher as being the only person whose evidence could be depended upon. You have done that, my lord, far more ably than I could presume to do. It is only necessary for me to say to the gentlemen of the jury, that while ignoring the jurisdiction of the court to arraign or try me as a subject of her Britannic Majesty, I feel confidence in you, my lord, and in the bench, that you will see justice done to the law, of which you are the honorable representative.

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The CHIEF BARON. Well, if there be any part of the evidence that you rely on or wish to remark on, I shall be very glad to learn what it is.

PRISONER. In the first place there is no corroborative evidence. Gallagher's evidence is a tissue of perjury from the commencement to the end, and he is the only man on whom you can depend. The so-called informer has broken down here to-day. I think the attorney general is bound, in honor, to withdraw two statements which he made in his opening address to the jury. He said he would produce evidence to show that I landed at Helvick Head. He has not presumed to do that, and there has been no identification for that purpose. He also said he would produce a witness named Nolan. That he has not done. There is no corroborative evidence to show that I had any connexion with the organization in Ireland or in America. I expect you will, in your analysis of the evidence, submit that forcibly and strongly to the jury; while, at the same time, with profound respect, I do not recognize the jurisdiction of the court.

The CHIEF BARON. With respect to your statement that there is no evidence of your identity as having landed at Helvick Head, there is evidence in the testimony of Roche, the farmer, and of the constable, wholly irrespective of any identification of features; for you are proved to be the person who came to him at Ring, with your clothes wet, and were taken by him to Youghal. That is some evidence as to who you were; and that you, the prisoner at the bar, are the person who came from the vessel. With respect to Nolan, the attorney general said he would produce him, and did produce him; but Nolan was entitled to withhold his evidence on the ground mentioned. And I mean to tell the jury that they are not to regard the fact of Nolan declining to give evidence as at all a circumstance against you.

PRISONER. Roche stated that his house was two miles from Helvick Head, and there is no information to connect me with the strand and the vessel.

The CHIEF BARON. There is the evidence of the coast guard.

PRISONER. He does not identify me.

The CHIEF BARON. He saw a number of persons go from the vessel up the road by the cliff, in the direction of the church of Ring, and that, irrespective of the testimony of Roche as to features, is some evidence to go to the jury that you were one of the persons who landed.

PRISONER. He makes no reference to my landing. He says that one of the parties that came to his house hired his car. The strand is two miles from his house. There is no evidence of identity.

The CHIEF BARON. That will be for the jury.

The SOLICITOR GENERAL then replied on the part of the Crown. He said: Gentlemen of the jury, with your permission, at the close of this case, I will make a few remarks without addressing myself to the entire evidence, but chiefly in reference to the observations the prisoner has made in connexion with the questions put to

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the witnesses at his request by my lord chief baron. The attorney general, in opening this case, expressed the regret which he felt that the prisoner had declined to avail himself of the assistance of the learned counsel who had been retained for his defence, lest that defence might be thereby prejudiced; his counsel withdrew in consequence of the express instructions they received, having no option left to them, when the prisoner so requested. The attorney general felt that perhaps the prisoner's case would suffer from having that assistance withdrawn. The duty of counsel is to weigh well the evidence, to protect and shield his client, and if practicable to explain away what may appear prejudicial to him. We all know of what advantage it is to a prisoner to have the services of able and experienced counsel to conduct his defence, and therefore the attorney general felt regret that the learned gentlemen retained for the prisoner should have been obliged to withdraw; but now, gentlemen, that the case has closed, I say advisedly, the prisoner has not received much injury from the course he has thought proper to adopt; nay, I think he stands almost in a better position than that which he otherwise would have occupied, because while he has placed himself in

the position of a *quasi* undefended prisoner, he has with great ability taken advantage of all the weak points in the case; and his comments upon any discrepancies in the evidence of the witnesses which have been elicited by the able judge who has presided at this trial, could not be surpassed by counsel. And what does it all come to? With regard to Gallagher's evidence, the prisoner knows that if that witness is believed by you he is a convicted man. And can there be a doubt raised as to the truth of that testimony? There may be some slight discrepancies in the informations which he has made; there may be, perhaps, a few additions, in the last information, to the evidence given by Gallagher in the first information made by him in May; but I ask you, as reasonable men, has the prisoner been able, upon the broad cardinal features of the case, to break down the evidence of either Gallagher or Buckley?

Gentlemen, I may tell you that you can convict upon the evidence of Buckley alone; but judges are in the habit of telling juries not to convict upon the uncorroborated evidence of an accomplice. But you have material corroboration of that evidence. First, in regard to the vessel itself, the fact of that vessel being in Sligo bay on the 23d and 24th of May is deposed to by Gallagher, and Gallagher is corroborated by his assistant and by the coast guard men. Buckley further swears, and Gallagher corroborates him, that three men, two of whom were wounded, were landed from the vessel at Stredagh on the 25th May, and two of those men are produced and identified in court as having been the men found on Stredagh shore upon that 25th of May. Then we have it proved by three or four witnesses, whose evidence cannot be impeached, that a large body of men landed near Dungarvan from this brigantine on the 1st of June, and Buckley's account of that landing is corroborated in every particular by two of

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Whelan's crew, who assisted in taking them to shore. The prisoner has suggested that he was not identified as being one of the thirty men who went ashore near Helvieck Head on that 1st of June; but has it not been clearly proved by Roche that upon that morning the prisoner, accompanied by Nagle, came to his house and hired a horse and cart to convey himself and his companion Nagle to Youghal, a distance of some eleven miles; and Constable Norris is produced, who tells you how upon that day he arrested Warren and Nagle, driving upon Roche's cart, near to the town of Youghal, and that he noticed that their clothes were wet and covered with sand. How materially does this evidence corroborate Buckley's account of the landing at Helvieck beach, and if this testimony be believed, we have the prisoner Warren brought almost to the very landing-place, and traced from Roche's house only two miles distant to the town of Youghal, where he is arrested on the afternoon of the day of landing; and thus, almost without referring to Gallagher's evidence at all, the testimony of Buckley in its essential features is amply corroborated, and Warren's complicity in this expedition is fully established.

No man in this court can forget the graphic description given of this expedition by Buckley—an expedition steeped in crime, and yet almost romantic, but for its criminal character. The band, I was going to say of marauders, but of lawless men, collecting in Canal street, in New York, and proceeding on board a steam-tug, which brought them to a brigantine in the river, where the party gets on board; their sailing on the 12th of April, the firing of the salute; their unfurling of the "sun-burst;" their voyage across the Atlantic; and their reaching the Irish coast on the 24th of May, when Gallagher the pilot is taken on board. If Gallagher's evidence is true, if it be not pure invention and fabrication, that he was taken down into the cabin of the ship, and that Nagle, in the presence of Warren, administered to him an illegal oath. John Warren is convicted of the offence with which he stands charged. It is said that Gallagher does not say in his informations, as he stated here yesterday, that he took that oath under terror that his life would be taken away if he refused, under threat of death, and perhaps the apprehension of being instantly shot; (and I need not remind you that we have but too recent experience of the use of the revolver in the hands of these desperadoes in this country.) Gallagher is not bound by the oath which he was forced to take on board the vessel under the threat of death; yet any facts that he withheld in his first information were no doubt withheld in the belief that he was bound by that illegal oath. That is a very reasonable explanation for the silence of Gallagher upon the occasion of his making his first information. Accordingly, when making that information on the 27th of May, two days after he came on shore, when brought before Mr. Labatt, none of the prisoners having been arrested at the time, in that information he does not disclose the secrets which he had sworn solemnly

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not to divulge when he came on shore. Gallagher admits that. Nor does he say anything of it on the 15th June; but when he comes to make his final information on the 12th of October, in the presence of the prisoners, he then discloses all about the oath.

PRISONER. Will you allow me to suggest a few words—a discrepancy also—Buckley swears all the "colonels" were in the cabin, and Gallagher conveniently swears that there were only Nagle and myself!

THE SOLICITOR GENERAL. I do not recollect Buckley swearing that all the "colonels" were there, but he swears that Warren and Nagle were in the cabin, as he heard their voices.

PRISONER. He swore all the "colonels" were there

THE SOLICITOR GENERAL. The prisoner will press me to say more than I had intended by

these interruptions. He has had all the informations in his custody, and he is suggesting these small discrepancies. He proposed to call Nagle to contradict what Corydon swore as to his having seen him recruiting in New York; but he never offered to produce Nagle to contradict Buckley or Gallagher, who swore that Nagle was in the cabin, and there administered this illegal oath in the presence of the prisoner.

The CHIEF BARON. Buckley merely says that all the "colonels" went down to the cabin together.

The SOLICITOR GENERAL. My distinct recollection is, that Buckley merely stated that he heard the voices of these two men, Warren and Nagle, in the cabin, but he did not swear that he saw a single person there.

The CHIEF BARON. He said the colonels were in the cabin at the time Gallagher was there.

The SOLICITOR GENERAL. This is quite possible. Gallagher says he saw the two prisoners, Warren and Nagle, in the cabin, and if Gallagher is speaking truth, Buckley is corroborated in a most cardinal and important fact. He is sworn not to disclose the secrets of this nefarious expedition; and although he keeps that oath for a time, yet afterwards, when brought in the presence of the prisoners, he discloses all. And you will find that his last information, sworn in Warren's presence on the 12th of October, contains all the evidence he has given upon the present trial.

Gallagher further tells you how he got into the boat, thinking to return to the shore with the person who came on board on the evening of the 24th May, and that he was dragged out and told to remain where he was. He tells you that he was informed that two men had been wounded that day on board, Nolan and another person named Connor; and that as these men were useless as members of the crew, it was proposed to land them during the night, when he could land along with them. He lands accordingly along with the wounded men, and a man named Nugent, who was one of the expedition. A coast guard describes his meeting Gallagher on the morning of the 25th May near the place, and says he was running

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at the time. Gallagher had some distance to go, and it is only natural he should be making all haste. Now one of the discrepancies relied upon between his first information and his evidence here is, that he omits in the information to mention anything about the cargo of fruit; but he stated here yesterday, when I examined him, that he was told on board that the vessel was going with a cargo of fruit to Glasgow, and in the information he made on the 17th June, before Mr. Coulson, he states this very thing. The man has given you an explanation as to how he omitted it on the first occasion, as he was deterred by the illegal oath that had been administered to him, and by the terror he was in at the time. He was naturally afraid that if he disclosed what had taken place, an account might be taken of him, perhaps in a way that he would not desire, when he reached his home in Donegal. That is a satisfactory explanation why you do not find this stated in the first information. Except you believe Gallagher a deliberately perjured witness, coming up here to tell a tissue of fiction which has no foundation in fact, you must convict the prisoner. Did you see the man's demeanor, his appearance, and his manner of giving his evidence? Did you hear the indignant denial of the man when he was asked had he ever committed a theft while on board ship, or any other place? Why has the prisoner not produced evidence to contradict Gallagher? He has had an experienced attorney, and ample funds at his command; he has had the means and opportunity to break down the evidence of Gallagher if he could. He has failed to do so; and I now ask you to believe Gallagher. And if Gallagher is believed, then Buckley is corroborated.

Has the prisoner given any explanation of how he happened to be in the cart on the bridge at Youghal, on that day of the landing at Dungarvan, on the first of June? He is a man not devoid of intelligence, or of education, and he was at liberty to account for his presence, under such strange circumstances, in this country. What brought him to Ireland on the 1st of June? He was arrested on the very day the other men from on board that ship were taken. He is a man who has been connected with the press, and must have had hundreds of correspondents at the other side of the Atlantic. What difficulty could he then have in showing how he came to Ireland, and for what purpose—if it was not a wicked one? There is ample corroboration of the informer on all the cardinal points of the case, convincing corroboration on all the collateral circumstances—the brig cruising up and down Dungarvan bay, the arrest of Warren and Nagle on the bridge at Youghal, their getting into the cart with their clothes wet, two miles from the very point where the men had landed on the coast. The prisoner does not attempt to give you a suggestion or explanation of how he landed on the coast that day. Is this ship imaginary; was she not cruising about under the eyes of the coast guards at Donegal? Were these thirty men who got on board the lugger imaginary? The coast-guard man, Jones, told you that he saw about thirty men get out of the lugger, and within

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a very few hours afterwards the prisoner is arrested, and he is recognized in prison as being the person who, with another, applied to a farmer, residing within two miles of the place of the landing, to be conveyed to Youghal. Gentlemen, it would be only wearying you if I were to press the case further. Even if Gallagher's evidence was out of the case, there is ample corroboration of the evidence of Buckley to fasten guilt on the prisoner.

The CHIEF BARON. What is that?

The SOLICITOR GENERAL. The fact of his arrest is corroboration of Buckley; the fact of his being arrested within a few hours after this landing of the thirty men, within a short distance of where it took place. That in itself brings complicity so home to the prisoner that if it were unexplained, a jury must, according to all legal principles, convict the prisoner. Then, gentlemen, I may remind you that the prisoner does what many criminals do; he resorts to the device of a false name; his name is Warren, and yet when arrested he says his name is John Donovan, and that he comes from Cork. If the circumstances under which he comes to this country were innocent, they are entirely unsuggested and unexplained by the prisoner. I again ask you to believe Gallagher. If his statement were false it would not bear the sifting of cross-examination. In this case I think every person will agree with me that the prisoner has conducted his defence as judiciously, as carefully, and as cautiously as if he had had the services of the very ablest counsel at the bar of England, Ireland, or America; and has he succeeded in satisfying your minds that Gallagher is a perjured man? There is no substantial difference in what that witness told on the 15th June and on the 10th and 12th October; and of course if Gallagher is believed there is an end of the case. I must apologize to you for having occupied your time so long, but I felt it necessary, constrained by a sense of duty, to make these observations. I sit down confidently resting the case in your hands.

After a brief adjournment the court again sat.

PRISONER. There are two or three points in the solicitor general's address to the jury that I would like to comment upon.

The CHIEF BARON. Would you wait for a moment until Crown counsel comes in?

On the Crown counsel returning to court,

The SOLICITOR GENERAL said: My lord, we have looked over the indictment and we think there is evidence in support of all the overt acts, but we have struck out several and left in only those upon which we rely.

The CHIEF BARON. You should reduce the number as far as you can; it is important to do so in order to simplify the case for the jury.

The SOLICITOR GENERAL. In that case they might be reduced to four—1st, 6th, 16th, and 20th. These are the four cardinal ones.

The CHIEF BARON. Which is the one in reference to the illegal oath?

The SOLICITOR GENERAL. That is the last one. The administering of an unlawful oath to one Michael Gallagher.

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The CHIEF BARON. Which is that which applies to the venue?

The SOLICITOR GENERAL. The 16th is the venue point.

The CHIEF BARON. The 17th seems to involve one and the same matter.

The PRISONER. In reference to some statements of Mr. Harrison, unintentional mistakes no doubt, I wish to correct him. He says that I was arrested at 12 o'clock, whereas Constable Morris says I was arrested at 3 o'clock at Youghal.

The CHIEF BARON. I think what he meant was to show that you were found on the cart at that hour.

The PRISONER. He further refers to my not putting evidence forward to contradict that of Gallagher; but I did not do so, not recognizing the jurisdiction of the court. I submit most respectfully that there is no evidence produced to establish or prove that the vessel in Sligo bay and the vessel at Dungarvan is one and the same vessel, nor is there any evidence to prove what was the character of the vessel, or what the cargo was, except Buckley and Gallagher, who say the cargo was fruit.

The SOLICITOR GENERAL. He should have had the man in charge of the vessel here to prove what the cargo was. If I had to speak again I could say a great deal more than what I did.

The CHIEF BARON then charged the jury. He said: Gentlemen of the jury, without preface, which I think unnecessary, I shall proceed to state to you the questions you have to try—to point out the way in which the evidence bears on those questions; and in doing that it may be necessary, especially as the prisoner is undefended, to present to you, somewhat in detail, the nature and particulars of the evidence, and to comment somewhat upon it, especially the testimony of the two principal witnesses—on which, if the prisoner had counsel, he would have commented. Gentlemen, the prosecution is founded upon an act of Parliament passed in the year 1848, and I will read for you the provision of that act upon which the prosecution rests. "If any person within the United Kingdom or without," &c. The charge against the prisoner at the bar is founded on this portion of the section: "If any person shall compass, imagine, intend, devise, or declare, or intend to deprive or depose our most gracious lady the Queen from her royal style and name of the imperial Crown of the United Kingdom, and shall express, utter, or declare such compassing, imagining, or intention by any overt act or deed," the offence shall be treated as treason, felony, &c. The charge against the prisoner is, that he did compass, imagine, and so forth, to depose the Queen from the royal style and name of the imperial Crown of the United Kingdom, and that he declared and showed that compassing by the various overt acts or deeds, or some of them, which are stated in this indictment. The act of Parliament requires not only that

the party shall compass or devise what is charged, but that he shall manifest the compassing and devising by an overt act. It is necessary for the Crown to specify the overt acts upon which they rely; and that it is for the jury to determine whether these overt acts, or any of

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them, have been committed, and whether they show the intention charged in the indictment. You have heard the word compassing used; it is an old term of the law; it means, in plain terms, intention or design. That at which the statute is levelled is the intention or design to depose the Queen from her authority, the intention being manifested by the overt act or deed. The proof of the overt act is absolutely indispensable, for without it the prisoner could not be convicted. You know that the secret intentions of mankind can only be ascertained by their words and acts; and while the statute protects the sovereign on the throne, protects her for the benefit of the whole community which she governs, and in which she is to maintain order by enforcing obedience to the laws, both the law of treason and this statute require that for the protection of the subject the crime shall not be treated as proved until it has been shown to be manifested by an act or deed of the party. Several overt acts—which mean nothing less than open acts of the party—are stated in this indictment.

I shall read for you some of these overt acts, without incumbering you with all, and if any one of them is established by evidence, your own common sense will suggest to you that the intention charged was manifested, that the compassing charged was intended by the prisoner at the bar. It is said, in the first overt act, "That he did compass, conspire, consult, and agree with James Stephens, O'Mahony, Roberts, and others, to raise, make, and levy insurrection and rebellion against the Queen." The second charges him with combining with Stephens, O'Mahony, Roberts, and others, "To subvert and destroy the constitution of these realms, as by law established," &c. If the prisoner conspired to levy war, insurrection, and rebellion against the Queen—if he conspired to destroy the constitution of these realms, which is that of a monarchy—that must of necessity be the result of a design to depose her from her authority. Another of these overt acts charges, "That he in America embarked on board a certain vessel, and placed a large quantity of guns and pistols on board that vessel and came to the coast of Ireland with these guns and pistols, with intent to effect a landing," the object of effecting that landing being "to join with other evil disposed persons to fight against the troops and overthrow the power of the Queen in Ireland." The indictment includes the names of Warren, Nagie, Costelloe, Fitzsimons, and others; but the Crown is entitled to put any one of these prisoners on trial, and they have proceeded against the prisoner at the bar. The indictment sets forth a number of particulars, a number of transactions which took place previous to the prisoner's coming to this country. Another of these overt acts states that in America these persons did embark on board a certain ship, and place arms therein—a thousand guns and a thousand pistols—the number is quite immaterial—and did sail into Sligo bay, with the intent and object of landing, in order to fight against and overthrow the power and authority of her Majesty in Ireland. Another of these overt acts states the same thing in a different way—that these persons came into that part of

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her Majesty's dominions called Ireland, with the intent and object of raising insurrection and rebellion in Ireland, and levying war against her Majesty; and that the prisoners, with others, took these arms and proceeded on board ship for the purpose of effecting the purposes of the Fenian organization, namely, for the purpose of establishing a republic in Ireland. Any one of these acts will be evidence sustaining the overt acts charged in the indictment, clearly establishing the design of an insurrection, the object of which would be to depose the Queen from her authority. Another of these overt acts says, "That they became members of an unlawful association called the Fenian Brotherhood, having for its object," &c. Anybody who entered into such a confederacy, you will have no doubt—the object of the confederacy being to overthrow the authority of the Queen—intended and devised the purpose which it is the object of the confederacy to effect. Another of these overt acts alleges, (what I shall hereafter have to explain to you,) that the prisoner at the bar did, on the 5th and 6th of March, 1867, (the day is immaterial, but there can be no doubt of the day,) at Tallaght, in the county of Dublin, and divers other places in the county of Dublin, and with arms and guns and pistols, fight against the constables and troops of her Majesty the Queen, and levy war against our said lady the Queen. There can be no doubt that to fight against the troops of the Queen, or the constables in arms under her authority, is evidence of a design to depose her Majesty from her royal style and dignity.

I believe it is unnecessary for me to say anything of the other overt acts. You perceive that in result they amount to this: In the first place, that the prisoner entered into a conspiracy or agreement with certain persons, no matter how few or how many, to levy an insurrection against the Queen. If you come to the conclusion that he was a member of the Fenian conspiracy, and that the object of the Fenian conspiracy was to establish a republic, you can entertain no doubt that he designed to overthrow the authority of the Queen in Ireland. If he came with that vessel for the purpose of landing arms, I presume you can have no doubt that his object was that which is imputed to him in the overt act which relates to that transaction. With regard to the levying of war in the county of Dublin, the policeman has told you about those transactions. He has told you what occurred there, in the assaults

on three constabulary barracks. These are evidence of the levying of war; and it is for you to consider how far the prisoner at the bar, with the instructions I shall give you on points of law, is affected by them. In this prosecution it is necessary for the Crown to establish some one overt act within the county of Dublin. An overt act having been established in the county of Dublin, it is open to the Crown to establish what would constitute overt acts showing a conspiracy in any other place; and though Sligo is not in the county of Dublin, and Waterford is not in the county of Dublin, yet, if the party came to Sligo, and brought arms for the purpose of effecting their treasonable purposes there, conspiring *there* to accom-

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plish those purposes, it will establish a case against the prisoner, provided he is also fixed with the overt act done in the county of Dublin.

Gentlemen, there is not a single particle of evidence to show that the prisoner at the bar was within the county of the city of Dublin, or that he had any actual personal participation in what occurred at Milltown, Stepaside, or Glencullen. But if you come to the conclusion that these were the acts of his co-conspirators in the Fenian confederacy, and if you come to the conclusion that the acts of levying war did take place within the county of Dublin, and were done by members of that confederacy of which he was a member, in furtherance of its objects, then, by a recent decision of the highest court of criminal jurisprudence in this country, I have to tell you, in point of law, that the prisoner would be answerable for that act if he was then a member of the confederacy, and that the acts done by others who were co-conspirators were his acts, and made him responsible in law for them, as if he was there bodily present doing the act himself.

Now, gentlemen, as regards the evidence: I think I may sufficiently rely on your recollection of it as to the general result, and as to the main and substantial questions you have to determine. Did the expedition take place; did the prisoner at the bar form part of the expedition; was he one of those who accompanied it; and was he a member of the Fenian confederacy; and did members of the confederacy, being co-conspirators in it with him, levy war in the county of Dublin, in March, 1866? The case with respect to the Jackmel expedition rests, fortified by the testimony of Gallagher, with some other evidence in support of his, upon the evidence of Buckley, and the general facts tested as to the vessel arriving off the coast of Waterford and landing a number of persons on the first of June. In the first place, the Crown must rely on the transactions in the county of Dublin, and it is essential that the prisoner should be connected with them. They must rely on these two propositions. First, that the prisoner, at the time when the acts of levying war took place, was a member of the Fenian confederacy; and secondly, that members of that confederacy, while he was a member of it, in pursuance of its object and in furtherance of its design, did the acts of levying war, with respect to which evidence has been given. First, with respect to the Jackmel expedition, the evidence, in a very great degree, rests on the testimony of Buckley—that testimony being part fortified by the testimony of Gallagher, if you believe it. Buckley comes forward as an accomplice; and the law declares that, in strictness, a verdict founded on the testimony of an accomplice would be a legal verdict. But it has been the uniform practice for a long time past, and a general practice for a long time anterior, for judges to advise juries, and juries have been in the habit of acting upon that advice, not to convict on the testimony of an accomplice or of any number of accomplices, unless that testimony be corroborated in some material part of the testimony itself; and that it is essential that it should be so corroborated in some part of the story which connects the prisoner with the crime.

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When an accomplice has received corroboration, the jury are not still bound to believe him; but if his story be corroborated, they are at liberty to act upon his testimony, and juries are to apply their own sense in determining whether the corroboration he receives is such as to satisfy their minds that he is telling a true story. Buckley's whole evidence is of that character; the whole of his evidence is that of an accomplice. He is not—and it seldom happens that an accomplice is—he is not corroborated in the whole of his evidence; if that were so, the other evidence would prove the facts without him; but it is only necessary to make his evidence such that a jury would be warranted in acting upon it—that in a material part, going to fix the prisoner with the crime, it has been corroborated, so that you may be satisfied of the truth of the whole. The whole of it may not be corroborated, but it must be corroborated so far as to induce the jury to give credit to the witness.

The testimony of Corydon stands even still more strongly in the same predicament: for he was not only an accomplice, but an informer and spy, giving evidence from time to time of these criminal proceedings; so that he comes forward with the stain of not only betraying his accomplices, but with the further stain of remaining with them, and receiving their pay, and, at the same time, the pay of the government for giving evidence against them. That is an odious character. Some will think that there ought to be an objection to the employment of such characters; but you will, I am sure, agree in this observation; that when deeds of darkness are to be brought to light, when the safety of the state is imperilled, when conspiracy is hatched, and the object of that conspiracy is to overthrow the constitution as it exists, and involve the whole community in confusion and calamity, in the destruction of the monarchy, in the dissolution of society into its original elements, when there is imminent

danger of such terrible results to all we hold dear in life, it becomes a matter of necessity that resort shall be had to persons for detection and information from whose real character all honorable men would recoil. Unless the testimony of accomplices, and, in some peculiar cases, the evidence of informers be taken, it may be impossible to discover deeds of danger and atrocity, which it is the duty of all governments, if they can, to discover, and of which it is their duty, if possible, to bring the perpetrators to justice. In these cases, if it be necessary to employ such instruments, it is a great calamity; but in many instances the employment of them may be only the means of preventing far greater calamities. I make these observations in reference to Corydon. No jury would act on testimony such as his unless corroborated in some material part of his story.

Having made these observations as to the nature of the evidence of the witnesses, and the law to be applied to it, I shall proceed now to that evidence. Supposing you believe Buckley, and his testimony is corroborated, if you believe him in so far as relates to the charge, that the prisoner became a member of the confederacy, the object of which was to depose the Queen, or establish a republic, (which necessarily must involve the deposition of the

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Queen,) and so far as relates to those acts which disclose the objects of the Jackmel expedition, there can be no question that on Buckley's testimony a case is established against the prisoner. He carries back the prisoner to the year 1865. That, you perceive, very considerably overreaches the transaction of March, 1867, which comprises what was done in the county of the city of Dublin.

PRISONER. My lord, you say Buckley. That is a mistake. He swears he never saw me until he saw me on board the vessel.

THE CHIEF BARON. You are quite right: it is Corydon I should have named. Buckley gives evidence of the Jackmel expedition. He describes himself as having been a member of this confederacy so long ago as 1865, when he left the American army. Corydon it is that states all the transactions affecting the prisoner individually prior to that; but Buckley states that he was himself a member of this confederacy from the year 1865; that the confederacy existed in 1865; and that overreaches the transactions of March, 1867. It was proposed to Buckley to join in a Fenian expedition, the mischievous objects of which were not disclosed to him, to which he agreed. He gives you evidence of a number of persons having assembled in a street in New York; that he was one of them; that he went on board a steamer; that they proceeded to where it was expected a vessel would be found; that ultimately they reached the vessel, and went on board, and after going in a direction to avoid pursuit, they ultimately proceeded to the coast of Ireland; and he then describes Warren as being in that expedition. He describes to you Warren as being on board, and holding a certain rank—the rank of colonel—and participating in all the designs that were disclosed in the progress of the voyage. He was present when the vessel was re-christened by the name of “Erin's Hope,” when the commissions were taken out and distributed, and when the object of the expedition was disclosed, namely, to land arms in Ireland—of course, in furtherance of the object for which the expedition was formed. All that, if you believe the testimony of Buckley, proves that Warren was a member of the Fenian conspiracy, and that he engaged in that expedition in conjunction with the others. The testimony of Buckley is supported by the testimony of Gallagher to this extent, that the vessel which Buckley describes was found by Gallagher, just as described by Buckley, in Sligo bay, and that he was engaged as a pilot. He says not only that Warren was on board, but that Warren and Nagle, another of the persons included in this indictment, endeavored to induce him to take the Fenian oath; and that ultimately they forced him to take an oath not to divulge what he saw on board the vessel. If that transaction took place in the presence of Warren and Nagle, that is undoubtedly evidence which you are quite at liberty to consider a corroboration of Buckley in a material part of his evidence, because it brings home to Warren a connection with the crime charged, the fact of his being on board the vessel, and forcing Gallagher to conceal the purpose of the voyage.

Now as to the testimony of Buckley and Gallagher. Each is impeached by matters, irre-

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spective of the character of Buckley as an accomplice, and founded on statements which they suppressed on former occasions when examined before the magistrates. These it will be my duty to bring before you by and by; but at present I am dealing with the extent of the corroboration received by Buckley in that transaction deposed to by Gallagher. In some of the other circumstances detailed by Buckley he is also fortified by the testimony of Gallagher. These, however, are not portions of the alleged crime, although they are connected with what occurred on that expedition. It appears that two persons were wounded—it does not matter how they were wounded. Buckley says they were wounded by the accidental discharge of a weapon he was cleaning; Gallagher says he was told they were wounded in a contest between the two men. The fact of their being wounded is proved by the testimony of Gallagher, and the evidence of the persons who found the wounded men on the shore, and who afterwards arrested both them and Nugent. Nugent is proved to have gone in company with these men and Gallagher; that is proved by Buckley, by Gallagher, and by those persons by whom they were subsequently arrested on shore. But, gentlemen, irrespective of details,

there is one leading feature in this case which I am bound to present to you, as affording inherent corroboration of the story told by Buckley. Before I refer to it, I wish to bring your attention to another piece of evidence which connects the prisoner at the bar with the sailing of the vessel, and that is, the transaction of the landing of a large number of men on the coast of Waterford, and the subsequent arrest of the prisoner at the bar. This portion of the case does not require that I should go into any detail of the evidence. It appears that a vessel, corresponding in character with the vessel proved by Gallagher and the coast guard to have been at Streeda, and corresponding with the vessel that was seen in Sligo bay, was near the coast of Waterford on the 1st of June; it appears that the persons in that vessel hailed a fisherman while engaged in his ordinary occupations. They first asked whether he would take two men on shore, offering him £2, not disclosing the design that any more were to be landed.

You are to consider the circumstances of that proposition being made, and the suppression of the intention that so many men were to be landed, in this light, that if they had communicated the fact to the fisherman he might have refused to take them. However, he says about thirty went on the vessel—on this fishing vessel—and were landed; and it appears, on the testimony of the boatman and a member of the coast guard, that these persons went up the hill in twos and threes towards the church of Ring. Was the prisoner at the bar one of the persons who so landed? Buckley swears he was. Buckley himself swears that he landed, and Buckley was subsequently arrested. It is proved that at the time when the boatman says thirty men landed, having plunged into the water and walking up to their middle, it is proved that about that time two men applied to a farmer named Roche to be conveyed to Youghal. He took these two men on his car; they were wet up to the middle; and he took

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them on to Youghal, where they were arrested on the bridge. These two men were Warren and Nagle; and if you believe the evidence of Norris, each of them gave a false name. If there was an infirmity in the identification of the features by Roche in the jail, you are not to withhold credence from him, but rather to attribute it to the way in which these persons were presented to him. As to his veracity there can be no mistake. But of this there can be no doubt, that two persons who had been on board this vessel came to him; that he took them on his car, and afterwards, when accosted by the police, they gave false names, and that the prisoner at the bar was one of those men. But Roche goes further, and says that when the parties were brought to him he would not have at first recognized them—the opportunity was so brief—but he says he was induced to recognize them by the prisoner shaking hands with him. The prisoner said, on this trial, that he did that as a joke: but Roche, on reflection, swears that the prisoner at the bar is one of the persons whom he brought on the car to Youghal; and, gentlemen, if you come to the conclusion that the prisoner at the bar was brought to Youghal, and in company with Nagle, that is evidence undoubtedly worthy of your consideration as regards the testimony of Buckley, because it brings these two persons in close proximity to the place where a large number of men unquestionably landed, according to the testimony of the police.

Now, gentlemen, do you come to the conclusion that the vessel that was sighted at Sligo bay was the same vessel from which the men were landed at or near Dungarvan? There is no evidence except the testimony of Buckley that arms were on board this vessel; there is no other evidence except that of Gallagher in reference to Fenianism on board the vessel. I do not now speak of the evidence given by Buckley. If you believe the evidence, at Sligo bay she was, in Sligo bay she remained, in the Bay of Sligo she was piloted, in the Bay of Sligo she discharged the pilot after some communication with the person called the agent; a transaction which may have been innocent, irrespective of the testimony of Bradley; but with this large number of persons on board—far beyond what was necessary for navigating the vessel—with this large number of persons on board she leaves Sligo, she goes to the southeast coast from the northwest, and there thirty persons are landed, leaving others on board. Here you have to consider what these thirty persons stated of themselves, and how far you consider these statements inconsistent with the circumstances I have mentioned. I am now dealing with the fact of this vessel being at Sligo, and afterwards at Waterford, and I am suggesting to you whether in the movements of the vessel, and in what occurred on the coast of Waterford, there is that which would lead you to believe the statements these men made. They stated that a vessel in which they were fishing took fire, and that they were taken up by the vessel which they had left. Is that a matter which you would consider so improbable as not to warrant implicit credit?

PRISONER. That statement only referred to the two individuals arrested in Youghal, Nagle and Warren.

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The CHIEF BARON. Then you have to account for so large a number of persons being at Sligo, afterwards at Streeda, and afterwards at Dungarvan, in a vessel charged with a cargo of fruit, the circumstance of the vessel discharging so large a number of men, the whole story of Buckley, and the other circumstances which I have suggested, and which appear to me to be fitting for your consideration, with the view to the corroboration of Buckley's story.

Before advertg further to the evidence of Buckley, let me deal with the testimony of

Gallagher; because if you believe the testimony of Gallagher, it very strongly tends to confirm one important part of the testimony of Buckley, namely, that in which he refers to the transactions that occurred in the cabin; and tends to corroborate it further by the reference to Fenianism that was made to Gallagher when he went down to the cabin and was in communication with Warren. If you believe the testimony of Gallagher, he is no accomplice. There is nothing in the evidence of Buckley or in the evidence of Gallagher to *prove* Gallagher an accomplice. But there is evidence on which it is for you to consider whether he was in fact an accomplice. There were unquestionably suppressions by Gallagher in his former testimony which go very considerably to shake the confidence that would otherwise be attached to his evidence, provided you think it material; and if Gallagher did voluntarily, and in order to shelter the parties who are charged, or who were on board that vessel, forbear to give information when he was first examined, and, still more, if he voluntarily withheld that information, that would be some evidence from which it might be inferred that he participated in their designs. But upon his story there is no *confession* of his being an accomplice. And it is only with respect to that part of the evidence that I think any question would arise. It is of some importance, with a view to his credit, to consider what his occupation is; and it is established, I think, that he is, and has been for a considerable time, following the occupation of a fisherman and pilot; therefore it is natural that he should be on the lookout for employment, and that he should be taken on board as a person to be employed; that he went on board is proved not alone by his evidence, but by other evidence. You have to deal, no doubt, with the credibility of that witness; but before you discredit him you should be very careful of the ground upon which you come to such a conclusion.

I will now bring to your attention the portions of Gallagher's evidence upon which the impeachment rests. Gallagher was first examined on the 27th of May; and he said that on Friday, the 24th, he observed a brig in the bay, and boarded her about twelve o'clock to ascertain whether she required a pilot, and having been told that a pilot was required, he was engaged. He said he was told that the captain had left, and had gone on shore to get provisions, and that he was expected back at six o'clock in the evening. He then says that the man in charge told him that the vessel was a Spanish vessel from Spain bound to Glasgow, but that he did not tell him the cargo. That was on the 27th of May, the day but one after

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the transaction occurred. Well, upon an information which he swore in the month of June following, the 15th of June, he undoubtedly does say that he asked the person in charge where he was from. He said he was from Spain, and bound to Glasgow with fruit. That is a positive statement, made upon the 27th of June, and it is in direct contradiction to what he had said on the 27th of May, namely, that the person told him he was from Spain and bound to Glasgow, and did *not* tell him the cargo. Well, the telling of the cargo, especially if it was stated it was fruit, was certainly not a very material circumstance; but at the same time the prisoner has a right to have your attention called to the contradiction. He said he received no money from them for his services, as the man in charge said they had no money until the captain came back. It turns out that he received 5s. or 6s. when he said that his family was poor; but he meant probably, not that he got nothing at all, but that he was not paid his stipulated pilotage for his services. I therefore suggest that that alone is not a reasonable ground for discrediting him. But then comes this portion of the information of the 27th of May, which I think is material: "A short distance from where I landed, about two miles, I met two coast guards, who made inquiry about the vessel." The coast guard men were examined, and told you what he stated, and they told you he did not make any statement whatever in reference to the transactions, the details of which he deposed to here; so that in his conversation with the coast guard men, and in answer to their interrogatories, he withheld that portion of the information which is now material. He then says, "I told them all I knew." Now, if he had merely withheld the information from these coast guard men, it would be hardly possible to discredit his evidence on that ground alone. But upon the 27th of May he pledges his oath to this: "I told them all I knew. They said they had been watching her, and they proceeded on towards the shore." That is a positive statement, and it certainly is not true. He did not tell them all he knew.

Then comes this further statement, which must have been a subject of interrogation by the magistrate. He had been apprized that the coast guard had been watching, and he must have recollected what passed in the cabin; and he states, upon his oath, upon that occasion, "I know nothing further concerning the said vessel." Does that mean that he knows nothing more of what occurred upon the vessel, or that he does not know anything more concerning the vessel or her destination? Does that mean that he intended to withhold the information from the magistrates? Unfortunately, upon his evidence, the latter is what he says, for he tells you the reason why he said he told all he knew. He said the reason he said he did not know anything further concerning this vessel was that he had given this engagement on oath that he would not disclose it; and that, in consequence of the oath he had thus taken, and which he desired not to violate, he took an oath which was a false one—saying that he had told all he knew about the ship. When he was examined this morning,

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he said that some of the statements contained in his information were taken down wrong.

But I do not think he applies that to either of the two statements I have referred to. In one information he says it was 7 o'clock in the morning he saw the vessel, and in another he says it was 7 o'clock in the evening. He says in the information sworn on the 15th of June, "I did not ask her name, nor did I hear it. I did not ask the captain's name, who was said to be on shore." In his informations subsequently made, in October, he said, "I asked the name of the captain, but the man in charge would not tell me, and I could not get the name of the captain." So it would appear he inquired into both of these things, although in his information in June he stated what I say. Gentlemen, the important part that I have suggested to you is, of course, momentous with a view to the prisoner's interest in this inquiry. That statement in May, upon Gallagher's oath, is inconsistent with the statement he subsequently made; but there is this, further, which it is always important to consider with a view to evidence of this kind, that, although he might have been mistaken on the 27th of May, and had been examined again on the 15th of June, and was for some time in custody, yet it was not until the 12th of October, which was about the time that Buckley's information was ultimately sworn, that he, for the first time, gave a detail of that transaction which occurred in the cabin. Nothing of that was said upon the first or second information. In the last (the third) information he gave a larger account of what occurred, for he says that about 2 o'clock he was taken down to the cabin by the man in charge, and saw two persons, the prisoner and Nagle. He could not say whether there was any one else in the cabin. Nagle then asked him would he like to be a Fenian. In the statement to you he said what he was asked was would he be a Fenian. "I told him not, and he asked me were there any Fenians in the county," &c. "The man in charge of the vessel then told him to swear me not to give any description of the vessel when I would get on shore. I would not, and the man in charge took a pistol, and told me to take the book. I then took the book and swore not to give any information about anything I would see in the vessel."

In his evidence yesterday he said, "anything I would see done about the vessel." That appears, thus, on the third information for the first time; and where the witness for the Crown has the full opportunity of telling the entire of his story in the first instance, and does not tell the entire, and then adds to it afterwards upon the very point upon which his evidence is all important for the Crown, it is undoubtedly a matter open to grave suspicion, and it will be for the jury to so judge of his evidence by the ordinary rules of life, common sense, and common honesty; whether or not they treat the omission to make this declaration in the first instance as sufficient to induce them not to give credit to it when made upon the second occasion. But, notwithstanding all that, there is always to be considered by the jury the manner in which the witness gives his evidence, the circumstances under which he be-

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comes connected with the transaction to which he deposes, and the circumstances under which the evidence is originally given. When this man was sworn, as described, he must have known perfectly well that the persons who swore him had something to do with the Fenian conspiracy, to which they asked him did he belong. He does not say himself he was afraid of making the disclosures when he was examined, but he does say he was affected by the oath he had taken. He was originally employed, as I have already suggested to you, in his ordinary avocations. He went with a number of persons and was employed as a part of his ordinary occupation; and the nature of that occupation is proved by the members of the coast guard examined before you. He himself swears positively that he is not and never was a Fenian, or connected with the rebellious proceedings of last year. You have had an opportunity of seeing how he gave his evidence; and although you are called upon to scan it narrowly, with a view to those circumstances alleged to affect its credit, to which I have just called your attention, yet you have ultimately, upon your oath, to say, do you or do you not believe him? Do you believe him an accomplice, because he did not tell all in his first information? Having regard to the fact of his occupation and the way in which he was employed, do you think there is reason to attach impeachment on him against his positive oath that he had nothing to do with Fenianism? If you do not believe he had anything to do with it, there is nothing whatever to indicate that he is a witness whose credit is not to be regarded like any other witness, not requiring corroboration if you believe him, and lending corroboration, if you believe him, to the story of Buckley.

With respect to Buckley himself, you will see how the case stands as to his statement. In Buckley's original evidence he omitted several persons whose names he supplies in his evidence upon the table. He appears to have been originally sworn upon the 12th of September, and re-sworn upon the 12th of October. At the time his first information was sworn, I may say that no considerable number of these parties was arrested. He omits some persons holding the rank of colonel whose names he supplies in the evidence given before you. He omitted the names of Phelan, Doran, and O'Doherty, who were colonels; he omitted the name of James Lawless as one of the parties. He says that he forgot them, and that he was in some excitement at the time he swore his first information. It is difficult to conceive how he could have been excited upon the 15th of June; he must have been arrested some time before that; and he says himself that it was some days after he was arrested that he was in communication with the Crown solicitor for the purpose of giving the information he was able to afford. He had, therefore, time for consideration. Nevertheless, while I bring that to your notice on behalf of the prisoner, it is proper to suggest to you, that in that informa-

tion of the 16th of June he totally omits the name of James Lawless, and who that Lawless was. Why, he was the man who landed with himself, Buckley, who, I believe,

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was arrested with him, and, consequently, must have been perfectly known to the Crown as a participator with the man who was giving the information, from which information he appears also to have withheld the statement about Phelan, Doran, and O'Doherty. If he forgot Lawless, who was really his known associate, that is certainly a matter very favorable, tending to sustain the truth of his own statement that he omitted the others because he forgot them too.

The SOLICITOR GENERAL. He says in his information, "I do not just now recollect the names of any others."

The CHIEF BARON. Yes, and in his evidence given upon the table I think he omits the names of one or two persons whom he mentioned in his informations; for in his information he stated there were four colonels, and seven captains, and four lieutenants, and eleven persons who were not lieutenants. In his evidence upon the table he makes seven colonels instead of four, and five captains in place of seven, and three lieutenants instead of four, and six persons who held no rank instead of eleven. When, therefore, he was examined before you, he omits the names of several whom he names in his informations; and you will say whether the account he gives you (and apply it to your own good sense) whether such forgetfulness is or is not natural. You have to deal with men of all kinds, some of them deficient, some of tenacious memory, and it is for you to say whether this witness satisfactorily explains to you why he omitted at one time names which he supplied at another.

The next matter of impeachment is of somewhat more importance. Gallagher, for the first time, in his last information, swore on the 10th of October, and Buckley, for the first time in his evidence before you, gave evidence as to what passed in the cabin. Buckley, in his information, does not say a word of what passed in the cabin. He now says he heard what passed in the cabin. He knew that what passed there was the administering of an oath. He says he only heard so much of what passed as indicated that they were asking some one to take an oath. He says there was a door between the cabin and the part of the vessel where he was, and at that time the colonels were in the cabin. Gallagher only speaks of two. He says they could not be anywhere else in the ship. "I only heard part of the conversation. It was an excuse of Gallagher for not taking the Fenian oath." Gallagher was asked, according to his own statement, not to take the Fenian oath, but to swear that he would not divulge anything he saw on the vessel; but Gallagher says they asked him was he a Fenian, and, therefore, there was a talk about Fenianism. Buckley then says, "he said he was too old, and that was all I could hear." Gallagher said, not that he was too old, but that he was advanced in life, and had children, a mother and a wife. What then occurred was certainly a material fact to be disclosed; and he was asked by me why it was that he made no statement of that at the time? He said he did not speak about it, and did not think about it, and was not asked. Again, in disclosing all the transactions connected with that vessel, in disclosing the designs of the conspiracy, and the purposes for which the vessel was

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to be applied, it was a most important matter to have stated that there was a determination formed by the members of the expedition to take the town of Sligo, and that that determination had been abandoned, and that *that* was the reason why they went towards Cork, and abandoned the attack on Sligo in consequence of the Fenians having been quieted by the failure of their former attempts. That was a material circumstance, and you will say whether it was likely he could have forgotten it, whether in making that detailed statement of the voyage how they left America: how they changed their course to avoid detection; the putting on shore the wounded man; the coming on board of the pilot; the putting ashore of the pilot; the coming on board of the person who had communication with the officers; the sending ashore of the colonels, and of two more men upon another occasion; the transactions near Dungarvan, which were stated with considerable detail; whether, when he says he did not recollect, when he gave his information, the circumstances of the determination to take Sligo, he could have reasonably forgotten it. Another important matter is this: he says that the arms were packed in boxes—large sized boxes. He says there were some sewing machine boxes and some piano cases, and then he says, "The cases in which the arms were opened during the voyage, they were so placed as to be ready to be distributed." He was asked how they were placed, and he says, "They were put in twos and threes; they were rearranged in the same boxes." In his informations he swore that they had a quantity of arms; he could not tell what quantity; that they were packed in cases as pianos and sewing machines, and included a quantity of carbines and revolvers; that the boxes were consigned to a firm in Cuba: and that many of those cases were opened during the voyage and the arms packed in *smaller boxes*. What he says now is, that the boxes were one within another, and that they were placed in the way he describes them, ranged in twos and threes, in the *inner boxes*. Whether that is a sufficiently satisfactory account, you will consider. He omitted to make, or did not make, in either of his informations, any statement as to ammunition having been on board, but he has given, in his evidence on this trial, an account of a very large quantity of ammunition, and placed in a most extraordinary manner, in

open boxes, between the decks, where he had constant opportunities of seeing it. Now, gentlemen, these are the circumstances inherent in the testimony of this witness itself, independent of the fact of his being an accomplice, on which you are called on to decide. He has been examined before you. You have had the great advantage of hearing the witness himself. If you believe the testimony of Gallagher; if you do not consider him to be an accomplice, he sustains part of the story of Buckley; and it being so sustained, the question you then have to determine is, whether, notwithstanding all that has been suggested with respect to Buckley, you really, upon your consciences and oaths, believe he is telling the truth. If you so believe him, as far as relates to the Jackmel expedition, it is plainly and clearly established. If you entertain any doubt with respect to his evidence, having regard

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to all the other parts of the case, of course you are bound to give the prisoner the benefit of it. With respect to the other portions of the case there is very little indeed to be observed.

His lordship here addressing the counsel for the Crown, said it was important for him to know in what manner they contended that the case should be left to the jury as regarded the alleged overt act in the county of Dublin.

The ATTORNEY GENERAL. We think that the fact of Warren having been proved to have joined the confederation after the date of the overt act in question, is quite sufficient to sustain the indictment according to Watson's case. But, irrespective of this view of the case, we submit that there is evidence to go to the jury that the prisoner was connected with the conspiracy before the 5th of March.

The CHIEF BARON. It was laid down in Watson's case, in conformity with other authorities, that the acts of conspirators, done before another conspirator joins the conspiracy, are evidence against him, to show the nature and object of the conspiracy, which he adopts by joining it. But there is no case, that I am aware of, in which previous acts have been, *ex post facto*, treated as the prisoner's acts for the purpose of fixing him with it as an overt act, indicating crime *in him*, of which he was innocent when it occurred. I am not prepared so to hold; but I am prepared, in conformity with the decision in Meany's case, to direct the jury, that overt acts, done in the county of Dublin, if done by the prisoner's co-conspirators in furtherance of the objects of the conspiracy, were in law overt acts of the prisoner, if, at the time when they were done, he was a co-conspirator, although he not only was not himself present, but was not within the county of Dublin, when those overt acts were done.

The ATTORNEY GENERAL. I am content that the jury should be so directed, having regard to the circumstances of this case.

The CHIEF BARON (to the jury.) Gentlemen, there are two ways in which, in point of law, this question might, possibly, be left to you, one of which appears to me to be clear, according to a recent decision of the court of criminal appeal, while the other must be subject to controversy. On that subject I won't trouble you with any of those views of the law which influence me at present in leaving the question as I shall leave it to you. But I shall tell you what the law is, and you will be perfectly able to understand it, for it may be stated in a few simple sentences. The law has declared, by a very recent decision of the highest court of criminal jurisprudence in this country, that if a man be a member of an unlawful confederacy, what is done by those who are co-conspirators with him *at the time when he is such member*, although done in a distant place, and without his personal intervention, is his act as well as theirs. If you should find that the prisoner was a participator in the Jackmel expedition, and that that expedition was of the character which has been described, that would establish that at that time he was a member of the Fenian confederation. But that would not be

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enough to support this indictment; because all the acts in which he was at that time engaged, and of which evidence has been given, occurred outside the county of Dublin, which is the district within your jurisdiction and that of the court which is now trying this case. In order, therefore, to establish this indictment, it must be proved, that in addition to any other overt act, there was an overt act in the county of Dublin for which he is responsible. If members of the Fenian confederation, in prosecution of the common design, attacked the three police barracks, and in so doing levied war against the Queen, those were overt acts of all the persons who were then members of the confederation, wheresoever they were at that time. And if he was, *at the time when those acts were done*, a member of the Fenian confederation, the acts done there were acts of his, and he was guilty of the levying of war at Stepaside, Glencullen, and Milltown, just as much as if he were bodily present with the parties who acted there. Now the evidence of his being a confederate at that time, which was the 5th of March, depends upon the testimony of Corydon; because no other portion of the evidence shows that Warren was a conspirator until the commencement of the Jackmel expedition, and that was on the 12th of April. On the 12th of April, according to the evidence of Buckley, he became one of the party, and proceeded to the Jackmel packet; and therefore at that time there is of course evidence, if you believe Buckley, that he was a member of the confederation. But that was subsequent to the attack made upon those various police barracks, upon the 5th or 6th of March. Corydon, however, deposes, that Warren was a member of the Fenian confederacy long anterior to that time. If Corydon be believed, he establishes that the prisoner was a member of the confederacy prior to that time; the other evidence proves that he was a

confederate after that time; and consequently there is evidence that he was a confederate at the time when the acts were done in the county of Dublin. But upon Corydon's evidence you cannot act unless it is corroborated; for Corydon stands, as I have told you, in the double capacity of an accomplice, and of an informer or spy. Is there then evidence to satisfy you that Corydon's story, with respect to the prisoner, is corroborated in a material part of it? The material and substantial part of Corydon's testimony is, that he was a member of the Fenian confederacy. He was at that time in America. On the 12th of April, a period of time very recent after the 5th of March, you find him—if you believe on Buckley's evidence that he was a participator in the Jackmel expedition—not only a member, but an active member of that confederacy; not only was he an active member of that confederacy, but he held high rank in it. He held the rank of colonel. And finding him in the confederation in April, you will say whether or not that so satisfies you of the truth of Corydon's story, that it connects him, as a member, with the confederation, so as to lead you to believe that Corydon rightly and truly extends his participation in it to a period antecedent to the 5th of March. Corydon spoke of him as having been a confederate long antecedent to that date; I forget exactly how long before, but I think it was 1865.

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Gentlemen, that is the way in which the case stands. If you believe Corydon's evidence, it is perfectly clear that the prisoner was a confederate at the time to which it refers. Corydon's evidence you cannot act on unless you think it is corroborated, unless you think the corroboration of it is such as to satisfy you of its truth. And that corroboration of the story of his having been a member antecedently, is only supplied by the fact of his having been found a member subsequently, namely, at a period so near to the 5th of March as the 12th of April, holding then the rank of colonel. Will you come to the conclusion, that his being so on the 12th of April is a corroboration of the statement that he was so for two years, or for upwards of a year before? In connection with the fact that he held high rank, you are to consider whether he is likely to have attained that rank unless he was for a substantial period belonging to the confederation. He was a person that was then selected as one of the trusted leaders of this expedition, if you believe the testimony of Buckley. You will consider whether he would have been so selected as one of its trusted leaders unless he was prior to that time a member of the confederacy. If you are satisfied that he was a member prior to that time, that is evidence that I feel bound to leave to you, as evidence to corroborate the testimony of Corydon; and you will then consider whether you believe the evidence of Corydon. You are entitled to take into account the way in which he gave his evidence. Gentlemen, the case stands against the prisoner thus: first, with respect to the Jackmel expedition, it depends on the testimony of an accomplice, Buckley, who must be corroborated; that corroboration is afforded by the testimony of Gallagher, if you believe it, subject to the observation on Gallagher's testimony which I have offered to you. The further corroborating testimony connecting the prisoner with the expedition is only that as to his landing, and there he is brought into connection with the vessel, if you believe the identification of the persons by whom his arrest, and his transit from Ring to Waterford, are proved.

You will see, then, that the questions before you lie within a very narrow compass. You are to determine whether he compassed, that is, intended to depose the Queen; whether he manifested that intention by overt acts; whether he manifested it by the act of becoming a member of this confederation—did he? Whether he manifested it by the act of being engaged in the Jackmel expedition—did he? Was there such an expedition, and was it such as has been described? Two overt acts, one done within the county of Dublin, and the other without the county, would support the indictment; for overt acts done outside the county of Dublin may connect him with the confederacy, so as to make him answerable for the acts of his confederates within that county; and one overt act within the county of Dublin would support the indictment. Was he a member of the Fenian confederation when the transactions in the county of Dublin occurred? Were these a levying of war? Were they done by members of a confederacy of which he was a member? Do you believe the testimony of Corydon, deposing to his being a member of the confederacy before the 12th

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of April? Do you consider the corroboration arising from the prisoner's having on the 11th or 12th of April held the high rank that he is proved to have done, at that time, in the confederacy, sufficient to show that he was a member of it for a substantial antecedent period? Does that, in your judgments, so corroborate Corydon's as to satisfy you that the prisoner was a member of the confederacy on the 5th of March? Gentlemen, upon the whole, you will have to consider whether or not you are satisfied beyond any reasonable doubt of the prisoner's guilt. The law of the land, in that mercy which is part of its justice, declares that before any man can be convicted there must be affirmative proof, to the satisfaction of the jury, removing that presumption of innocence which, up to the giving of the verdict, stands around him like armor. That is only another way of saying that the jury are called on, not as a matter of mercy or of favor, but as a matter of right and law, to acquit the prisoner, if they have any reasonable doubt of his guilt. But in determining whether or not there be a reasonable doubt, which, of course, must be considered with reference to all the evidence and to every part of it, a jury are not called on to acquit on a fancy of the possibility of

innocence. A possibility of mistake may, perhaps, be considered as existing in almost every inquiry that is human. What a jury are called on to do is, to apply to the matter before them that sound sense which each of them would himself apply in dealing with the ordinary concerns of life in which he had an interest. The law defines in no other way the manner in which a jury are to determine whether a reasonable doubt exists. The law does not otherwise define it, but leaves it to the jury to apply that judgment which they will apply in the ordinary concerns of life in which they have themselves an interest: and, acting upon these lights, to deal between the prisoner and the Crown. If you entertain a reasonable doubt, you are bound to acquit him; but if you do not entertain a reasonable doubt, you are bound by the most sacred of all obligations, the obligation of the oath taken by you as jurors; you owe it to yourselves, to your country, and to your God, to give a true verdict according to the evidence.

PRISONER. My lord, will you permit me one word? I respectfully beg to submit with reference to the rank you have referred to, that there is no corroborating evidence; it is simply referred to by Buckley. I would also impress upon the jury that I was not identified by Gallagher till the 12th of October, after his being five or six weeks in one jail with me, exercising in the same yard, and hearing my name called every day, and knowing that I was suspected of belonging to that expedition. I would respectfully submit that there is no evidence as to the cargo of that vessel, no evidence to prove that that landing at Dungarvan—admitting a landing for the sake of argument—was for any illegal purpose, but only the admission made by Buckley, of a lot of hungry men running away from the vessel.

THE CHIEF BARON. Most of these matters I have presented to the jury. Gentlemen, you cannot believe Buckley unless his evidence is corroborated, but if you believe Buckley about

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the whole story of the Jackmel expedition, then, and then only, the fact of his rank is proved. With respect to the other matters, I have already observed upon them. You will take into account what the prisoner has said as to his own case.

PRISONER. You have not referred to the identification of me by Gallagher.

THE CHIEF BARON. Oh, yes; I have said that there was evidence of identification by Gallagher. There is no question about the identification by Gallagher. You are G. Roche, I think.

PRISONER. Gallagher, my lord? You did not refer to it at all.

THE SOLICITOR GENERAL. The prisoner was eventually examined by the magistrates, and identified by Gallagher on the 12th of October.

The attorney general referred to that information of the 12th of October, in which Gallagher said the prisoner John Warren is one of the persons named in it.

PRISONER. That information was not given until after his being five or six weeks in the same jail with me.

THE SOLICITOR GENERAL. The evidence was this: Gallagher made his first information before Mr. Labatt, in Sligo; then he made an information on the 15th of June in Sligo before Mr. Coulson. Some short time after that it appears that he was committed to Kilmainham or Mount Joy prison, some three or four weeks afterwards. Then on the 12th of October he made the information before Mr. Barton, in which he identified Warren.

THE CHIEF BARON. He named Warren and Nagle.

PRISONER. My name was never mentioned until the 12th of October. What I want to impress on you is, that he never identified me until after he had been five or six weeks in prison with me in the one yard.

THE CHIEF BARON. There was an information on the 12th of September.

THE SOLICITOR GENERAL. Not by Gallagher, but by Buckley.

PRISONER. He was never brought before me until the 12th of October.

THE SOLICITOR GENERAL. That answers what you say yourself. It was at Sligo he made his information, and not in the presence of the prisoner at all.

PRISONER. It appears that this is an important question by the manner in which it is evaded.

THE SOLICITOR GENERAL. There is no evasion.

PRISONER. There is a direct evasion.

THE CHIEF BARON (to the jury.) No doubt Gallagher was examined on the 27th of May, and then he made no statement in detail at all. Gallagher was examined on the 15th of June, and then he made no statement of a portion of the details that are important, as I pointed out to you; he made no statement at all of that portion of the case that occurred in the cabin and that implicates Warren. Gallagher never made any statement implicating Warren until the 12th of October.

PRISONER. Yes; he never was brought to identify me.

THE CHIEF BARON. The information of the 12th of October is in these terms: "In the

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presence and hearing of Patrick Nugent, John Warren, and William Nagle, who stand charged with treason-felony, and with being members of a treasonable conspiracy."

PRISONER. I don't refer to that information at all, but to the circumstances of his having been five or six weeks in jail with me, and of his being then brought to identify me on the 12th of October.

THE CHIEF BARON. The information of the 12th of October states that "he, the said prisoner Warren, was present all the time, and told me to take the book."

PRISONER. He was put into a yard with me, and then brought to identify me.

THE SOLICITOR GENERAL. We must object to these matters.

THE CHIEF BARON. The first time he made any statement implicating Warren was on the 12th of October, and I pointed out to the jury that that was after several persons were arrested, and that the whole of the evidence of Gallagher is to be taken with reference to the time at which he made his last disclosure, which necessarily affects his credit. But it is for the jury to say to what extent, it at all, it affects his credit.

PRISONER. My lord, it is a question of identification. This man was brought to Kilmainham prison and put into the same yard with me. He is not brought to identify me, but is discharged after five or six weeks; he is brought back after five or six weeks more and is then brought to identify me.

THE CHIEF BARON. All that is for the jury; that he was in jail, and that after he had been liberated from jail the information of the 12th of October, which first implicated you, was sworn is true. All that is before the jury, and all that the jury are bound to consider on your behalf.

THE PRISONER. That is what I want to impress on the jury, and the question is, could he identify me when he was brought first?

THE CHIEF BARON. Both of them had been previously in confinement. You heard the evidence as to the identification, gentlemen, and you will consider how far it goes to affect the testimony of the witness.

A JUROR. The date of the first information is the 26th of May.

THE CHIEF BARON. Yes; and the second was made on the 15th of June, and that deposition was in Sligo.

The jury retired at twenty minutes after four o'clock, and returned to court at five minutes to five o'clock.

THE CLERK OF THE CROWN. How say you, gentlemen, have you agreed to a verdict?

FOREMAN. Yes.

THE CLERK OF THE CROWN. You say John Warren is *guilty* on both counts.

FOREMAN. Yes.

THE CHIEF BARON. Remove the prisoner for the present.

The court adjourned to Monday morning.

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SENTENCE ON THE PRISONERS.

SATURDAY, November 16, 1867.

The court sat at eleven o'clock to-day, when

The clerk of the Crown directed that John Warren, William Halpin, and Augustine E. Costello, you and each of you, have been indicted, tried, and found guilty of treason-felony, for compassing to depose our Lady the Queen; have you anything to say why the sentence of the court should not be pronounced on you?

THE PRISONER WARREN. My lord, I claim the privilege established by precedent; I have had no opportunity of making any remarks on my case, and I would now wish to say a few words.

THE CHIEF BARON. State what you have to say. We are ready to hear you.

THE PRISONER. I desire, in the first place, my lord, to explain, while ignoring the jurisdiction of this court to sentence me, and while assuming my original position—I wish to make a few remarks with reference to my reasons for interfering in this case at all. I know I can see beyond my present position the importance of this case, and I was desirous to instruct the jury, either directly or indirectly, of the importance of their decision, while never for a moment deviating from the position which I assumed. I submit, my lord, that I effectually did that, and they incautiously, and foolishly for themselves and for the country of which they claim to be subjects, have raised an issue which has to be settled by a higher tribunal than this court.

THE CHIEF BARON. That is a subject upon which we cannot allow you to address us. We cannot suffer the place in which you stand to be made the arena for appeals to those who may sympathize with you in opinion either here or elsewhere. We cannot allow you to refer to any ulterior consideration beyond that which belongs to the business in which we are now engaged, and that is, the pronouncing of sentence upon you. As to that, you are at liberty to state anything you may have to say against that being done.

THE PRISONER. I have said, my lord, all I intend to say on that subject. I will now refer to the nature of the evidence upon which I have been convicted; I consider that is a duty which I owe to myself, and I deem it a privilege which your lordship will allow me.

THE CHIEF BARON. It is right for me to tell you that this is not the time or stage of these proceedings in which you are entitled to comment in detail on the evidence, with the view to show that the verdict should not be what it has been. We are not at liberty to act on a discussion of the propriety of the verdict, unless you can point out something in point of law which shows infirmity in that verdict.

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The PRISONER. I propose, my lord, to show that the verdict is contrary to the evidence.

The CHIEF BARON. I must again tell you that you are not at liberty to do that.

The PRISONER. I propose to state briefly, in answer to the question put to me, why the sentence of the court should not be pronounced on me. Do I understand your lordship to refuse me that privilege positively, and to stop and interrupt me by every means?

The CHIEF BARON. Certainly not to stop and interrupt you by every means, nor to refuse you anything to which you are entitled. But you are not entitled to impeach the verdict by a discussion at large of the evidence. We are bound by that verdict just as much as you are; that is the law.

The PRISONER. Have I not, my lord, the privilege of commenting on the evidence?

The CHIEF BARON. You are not at liberty to comment at large upon the evidence for the purpose of showing that the verdict was wrong. What in strictness you are entitled to do is, to show any matter of law which may affect the propriety of pronouncing of sentence upon you, assuming the verdict to stand.

The PRISONER. I have, therefore to state that if you are determined, my lord, to take from me the privilege established by precedent in this court—

The CHIEF BARON. There is no such privilege.

The PRISONER. Has it not been accorded to every political prisoner sentenced in this court for the last three or four years?

The CHIEF BARON. They have been allowed to address the court. We will allow you to address us, and hear all you have to say, within the limits of what the law permits, in these, the last words which you can speak to us. The law does not allow us to permit, at this stage, the verdict of the jury to be impeached by detailed comments upon the evidence; the time for those comments was before the jury gave their verdict; but after the verdict has been pronounced, it binds us, as it binds you. I am now speaking as to a matter of fact. Anything in point of law that attaches infirmity to the verdict we will hear; and you are entitled to comment on all that, in point of law, tends to show why sentence should not be pronounced upon you.

The PRISONER. What position do I stand in now, my lord? I have been indicted with a number of others for taking part in the Dungarven landing; some of these have been tried; the case against others is virtually abandoned. I have been tried and convicted. Then what position do I stand in, my lord? Am I convicted on the evidence of Corydon, who swears that I belonged to the Fenian confederacy in 1863? Does that prove that I belonged to it in 1867? Am I guilty of the overt act of the 5th March, on which I stand convicted and await your sentence now?

The CHIEF BARON. You heard the law laid down by me to the jury, which I was bound to lay down according to established authority, that if they believed you belonged, on the 5th of March, to the Fenian confederacy, having for its object the deposition of the Queen,

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you were guilty of the acts done on the 5th March, whether you were present at them or not; for you were answerable for all the acts done by your co-conspirators in that confederacy in furtherance of its designs. That is the law laid down, and that law we were bound to administer.

The PRISONER. You instructed the jury at the same time, my lord, that the circumstance of my holding the position of a colonel, and belonging to the Fenian organization in '63, was sufficient corroboration of the evidence that I belonged to it in '67, and that is the point of your instructions on which I was found guilty.

The CHIEF BARON. You are under some misapprehension. I stated to the jury that your holding the rank of colonel was evidence for their consideration, in considering whether you had belonged to the confederacy at a period anterior to the 12th of April. I told them that they were at liberty to consider whether or not you would have been appointed to that rank if you had joined it then for the first time. I did not tell them that *proved* the truth of the testimony of the accomplices, but that it was a matter on which they were at liberty to consider that testimony.

The PRISONER. It is precisely the same thing, but expressed in different phraseology. Am I to understand, my lord, that I have not the privilege of addressing the court as to why sentence should not be passed against me?

The CHIEF BARON. You are not so at liberty to consider. You are at liberty to address the court, but you are not at liberty to comment at large on the evidence, and to prove that the verdict was wrong.

The PRISONER. Have I not the privilege of commenting on the evidence, my lord?

The CHIEF BARON. I have answered that already.

The PRISONER. What can I speak on, my lord? To what can I speak, if not to something connected with my case? I am not here to refer to a church matter, or any political question.

The CHIEF BARON. I have told you what we are bound to rule.

The PRISONER. I will state, my lord, that as an American citizen, I do protest against the whole jurisdiction of this court, from the commencement, in arraigning me, in trying me here forcibly, and in convicting me on the evidence of a man whom your lordship termed

to be of the most odious character. You instructed the jury pointedly and strongly on one occasion—but your subsequent instructions modified that instruction—that no respectable jury could act on his evidence, and that it was a calamity for any government to have to use him. You instructed the jury to that effect, my lord, and the jury afterwards found me guilty on his uncorroborated evidence. I do not want to say anything disrespectful to the bench or to the jury, but I want to refer to the nature of the evidence, and to see why I stand here as a felon to-day. It is a privilege which has been accorded to every one who stood in the same position previously as I now stand in. I will, my lord, further refer to matters in connection with this case, which, I submit, are extraordinary. There is one part of it especially,

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that which is called the cabin oath, to which so much importance has been attached. Let the jury look at me, and say if they believe that I am such a scoundrel or such an idiot as to take into the cabin a man like Gallagher, an ignorant man, and place a pistol to his head to compel him to take the oath, and then allow him to go on shore. I ask you, my lord, not to believe that I am such a scoundrel or such an idiot. I ask you to believe that no Christian man would be guilty of such an act of idiocy, and I ask you not to place any reliance on Gallagher's oath. I say, my lord, I never saw Gallagher until I saw him in Kilmainham. You see the nature of, and the manner in which the evidence against me was got up. It appeared to be by the interposition of the godhead that each of these men was allowed to tell lie after lie; for though they were well trained, and received their lessons under able and experienced masters, they contradicted themselves word by word. These are what are called respectable men, forsooth, and their respectability is guaranteed by their evidence; but they have, I submit, perjured themselves. Gallagher, my lord, swore at first but one information, and that information, I submit, was the truth; it bore the impress of truth on it. He then swore a second information, and that second one was false. I say, my lord, that it is contrary to law to convict a prisoner on the evidence of a person who swore he was a perjurer; and, my lord, I may tell you that I have seen hundreds of times in America, cases where the judge sentenced the witness who perjured himself on the stand, and sent him at once to prison. What is the fact, my lord? Gallagher was imprisoned in Kilmainham with me: he was taken to the same exercising yard with me; he was brought there first on the 1st July; he was exercising in the same yard with me; he knew my name well; he heard it called several times; he knew the acts for which I was imprisoned, and he was taken away on the 1st August. During all the time while he was in Kilmainham he never once identified me. He is brought back to Kilmainham on the 12th October, and out of forty or fifty men he identifies only three. You will see, my lord, the impress of lies on the face of the whole of his testimony; for if he came on board the vessel in the ordinary capacity of pilot, he would do his duties as pilot, and when he had done them he would leave the vessel and get his pay. That is what would ordinarily happen in the case of a pilot, but not so in the case of the respectable Gallagher, for he swears that he was not only asked to pilot the vessel, but that he was taken down into the cabin, let into all the secrets, and made to swear he would not tell them when he went on shore. I submit, my lord, that what he swore in his first information had the impress of truth on it, and that all the subsequent informations were false, and that he perjured himself in them. I submit that from the commencement to the end of this case, there is not the least shadow of evidence to show that there was any hostile intention to land on the coast of Ireland, and that the evidence as to the identity of the vessel would not stand for a single moment in a court where evidence and law would be respected, and where the evidence of perjurers and informers would not be

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tolerated. On the supposition that this phantom, this Flying Dutchman, which would be the better name to give her, existed, in what way does your lordship connect my name with it? The evidence is that the vessel seen in Sligo bay and the vessel seen off Dungarvan harbor are one and the same. My lord, I fail to see that they are one and the same. In the first information sworn by Gallagher, there is nothing said about the dimensions or the tonnage of the vessel; but in his second information they are made to correspond with some scribbled figures found on Nagle, and she is set out as being 81 feet and 115 tons burden. The coast guard swore that she had double topsail yards, and that she looked like an American-built vessel; while Brown, the Dungarvan fisherman, swore that she looked like a brigantine with white sails, and about 350 tons burden. What evidence, then, is there, my lord, I ask, that the vessel seen in Sligo bay and the vessel seen in Dungarvan harbor are one and the same vessel? Not a particle of evidence, I submit. I submit also that there is not a particle of corroborative evidence to prove that the vessel seen off the coast of Donegal, and the vessel seen in Dungarvan harbor, with which you connect my name, are one and the same vessel, except the evidence of Buckley, who committed himself as a perjurer, the very first question he was asked with reference to his age, on that stand. As to the so-called landing at Dungarvan, I submit, my lord, that you have no proof whatever that I shipped from an American brigantine in a hooker, or that I landed from the hooker at Dungarvan, or any other proof to connect my name with that matter, except the evidence of the informer and perjurer, Buckley. Your evidence is that a number of men were seen to land at Helvick Head from a fishing boat, which, it is plain from the evidence, took them off a vessel that was out at sea; and that two persons afterwards presented themselves on the road, who were

not disguised in any way; that they hired a cart, and drove them on towards Youghal. I submit, my lord, that the verdict of the jury is contrary to the evidence, and that there is not a particle of evidence corroborative of Buckley's to show that I was one of the men that were landed at Helvick Head, or at Dungarvan. Though you deprived me of liberty, though you indicted, arraigned, and convicted me as a British subject, while protesting against it, and ignoring your jurisdiction to try me at all. I submit, my lord, I have proved that the case against me was fabricated, and based on perjury. I stand here now, my lord, a convicted felon, the victim of a slavish, cowardly perjured, false band of informers.

The CHIEF BARON. We can't allow you to indulge in observations of that kind; you must confine yourself to the question as to why the sentence of the court should not be pronounced on you.

The PRISONER. Corydon swore in his informations, my lord, that he knew me to be a State centre of the Fenian organization in Massachusetts, in the year 1865, and after that he swore on the stand—he heard probably from a certain source that I would comment on his evidence, and he altered it to 1863. In his informations he swore that he met me at several Fenian meetings in

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the year '65, but he never attempted to repeat that on his direct evidence on the stand. He says that I was a captain in the year '61. That, my lord, I submit I will disprove also; but first allow me to refer your lordships to the peculiar position in which your law places me. I am an American citizen, and as such I owe allegiance to that government, and to none other. I am a soldier in the United States army; my leaning was always for the army; I have fought for America: I belong at present to her national militia, and in case of war to-morrow between these two countries, England and America, my position is in the army. What would be the consequence? Looked at in the light of the present trial, if your general took me in battle, what position would I be placed in? I am found guilty of high treason, and should be shot; and if taken on the high seas I could be strung up on the yardarm. The American government has given me an engagement, a contract, that, if there was anything wrong in the course she followed by adopting me as a citizen, it was to be settled between the United States and the British government; and instead of settling this matter with me, if there are complaints against or injuries caused by the government of the United States, it should be settled with that government, and not victimize me. The haste you showed in the matter, when it was evident that the United States government were determined to settle the matter, and the haste you showed in bringing me to trial here, proves what the object of the Crown was. But although the spirit which will never bend will never be broken, I am almost blind, so as to be scarce able to see your lordship from where I stand, from the effects of the confinement to which not a human being but a wild beast should be subjected; and when your lordship will pass sentence on me, and remove me from the bastille in which I am at present to some other place, it is the greatest favor you can confer on me. Your law, I believe, my lord, claims even the sons of Irishmen, born in other states; but, strange to say, you don't seem disposed to interfere in that matter just now; you even claim the grandsons of Irishmen, for you claim as British subjects Andrew Johnson, our President, Secretary Seward, and Governor Fenton, of New York; and by your law General Washington, General Warren, and Benjamin Franklin lived and died British subjects, and you could hang the whole of them if convicted of high treason. My lord, though a very humble instrument when standing before you at this moment, my case, believe me, assumes a most remarkable and important size, and the present cases would form a great and momentous epoch in the history of these times. There is one point, my lord, to which I want to refer—I mean the manner in which my government has acted.

The CHIEF BARON. I can't allow you to engage in a discussion on that matter; we have nothing to do with the conduct of that government; we have only to administer the law of this country.

The PRISONER. I will only call your attention to one point. I wrote to the President of the United States, and I received a communication from Secretary Seward.

The CHIEF BARON. I cannot allow you to make any statement with regard to any com-

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munication with the government of the United States. I can't allow you to make any reference to anything done by any government. We have nothing to do with the conduct of any government; we have only to administer the law which we are sworn to administer here.

The PRISONER. I was only going to state why the high officials of your government —

The CHIEF BARON. I cannot allow you to enter into comments on the conduct of any official of any government. We have nothing to do with the conduct of officials even of our own government. We are here to dispense justice according to law, and whatever officials of our government, or of the American government, may have done, cannot have the slightest effect on our judgment. It can neither affect us favorably or unfavorably as regards the prisoner, and it can neither affect us favorably or unfavorably as regards the Crown. We stand indifferent as to both. We have only to administer, for either, or against either, according as it applies, the law of the land.

The PRISONER. My lord, I ask no favor in the matter. I am ready for a full measure of sentence. I was going to state, my lord, that while neither your government nor the government of the United States had kept the promises which were made —

The CHIEF BARON. We cannot allow you to state what was promised by either our government or the government of the United States. I have told you already that we have nothing to do with the conduct of either government.

The PRISONER. I will only call your attention to the correspondence that passed between your government and the government of the United States.

The CHIEF BARON. That I cannot allow you to do; with it we have nothing to do here.

The PRISONER. Then I must conclude, my lord. It is generally very hard to prevent me from saying what I have to say, and I am not aware that any one has succeeded in doing so up to the present, but your lordship has completely flanked me. My lord, I protest against the entire jurisdiction of this court. I have confidence in my government that they will see justice done to me, and that they will establish my right. The proposition of placing me in the position of the United States must stand or fall with the Constitution of the United States. If England is allowed to abuse me as she has done, and if America does not resent England's conduct towards me; if the only allegiance I ever acknowledged is not to be vindicated, then thirteen millions of the sons of Ireland who have lived in happiness in the United States up to this will have become the slaves of England.

The CHIEF BARON. I can't allow you to use your present position for an appeal to the sympathies of any persons or party in America.

The PRISONER. What can I refer to; will your lordship tell me? You will not allow me to refer to Irish men; perhaps you will allow me to refer to and speak of Irish women.

The CHIEF BARON. My business is to tell you what you can't refer to. You can't refer to

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what may be the conduct or the acts of any government, or the acts of any people, whether in the United States or in this country. With them we have nothing to do.

The PRISONER. I must state, in conclusion, repeating that I ignore the whole jurisdiction of this court either to indict, arraign, or convict me, and that the sentence which you will pronounce on me will be received under protest by me. I now, my lord, return your lordship my sincere thanks for your forbearance with me so far, while, at the same time, admitting that you have taken from me a privilege established by precedent, and that has been accorded to every political prisoner tried in this court for years past. Give me now, my lord, the full measure of sentence. I promise you I will live longer than the British constitution.

(The prisoners, William Halpin and Augustine E. Costello, then severally addressed the court.)

The CHIEF BARON then proceeded to pass sentence. He said: John Warren, William Halpin, and Augustine Costello, you have each of you been convicted of treason-felony. That crime consists of the design to depose the sovereign of this realm from her royal authority. The indictment charged each of you several acts as overt acts manifesting that design: and sufficient proof has been given in reference to those overt acts to warrant your conviction. The jury in each case having been directed by the court to consider it, with a view to ascertain whether there was any ground for a reasonable doubt, in each case came to the conclusion, without much doubt, of finding a verdict of guilty. In your addresses to the court, you have endeavored, each to comment upon the evidence on which the verdict was found against him; and we have felt it our duty to stop you in a rediscussion, upon the present occasion, of matters which belonged to a former stage of the proceedings, when the jury had to consider that evidence. You, John Warren and William Halpin, were not defended by counsel; but you certainly, each of you, in the efforts which you made with reference to your defence, brought out most of the points for the consideration of the jury that were material for that defence. I, during the progress of the trials, endeavored, as it was my duty to do, holding the scales of justice evenly between you and the Crown, but dealing with men who were undefended by counsel, to lay before the jury all the matters which, as it appeared to me, I possibly could, in fairness to both parties, urge on your behalf. My learned colleague did the same in the case of the prisoner who was defended by counsel, and who has justly and fairly acknowledged that he had done so. With all the consideration that could be given to the case of each of you, in the course of a prolonged investigation, and with all the efforts that could be made to lay before the jury every fact that could be applied in your favor, each of your juries came to the conclusion of finding a verdict of guilty against you. And though, during your addresses, you have made several comments on the evi-

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dence, I do not believe there was one of them that was not presented by myself, or by my learned colleague, to the jury by whom you were respectively tried. We have now but one duty to perform. We must act on the verdicts of those juries: and I have the concurrence of my learned colleague for saying that we see no reason to cast the slightest shade of doubt on the propriety of those verdicts, arising from anything that appeared upon the evidence on which they were found. You have each of you addressed us some observations as to your positions as American citizens. At a former period of these trials, I had to remark on the state of the law upon that subject, both in this country and in America. I felt it my duty to bring the attention of two of you, and of the counsel engaged for the third, to what I shall now briefly state again, namely, that, according to the law of this country, he who is born under the allegiance to the British Crown, cannot, by any act of his own, or by any act of any

foreign country or government, be absolved from that allegiance. But I have also to observe, that some of the greatest legal authorities in America have laid down the same law as affecting not England only, but America also. It may be a calamity to persons circumstanced as you were, that in accepting the privileges accorded by the government of another state, you have done that which creates a conflict between two duties. You may have acquired all the privileges of American citizens. With these privileges no court in this country does or can interfere. Of whatever privileges you received there, we cannot deprive you, if we would; and, for my part, I would not if I could, except so far as they conflict with the duties you owe to the sovereign of this realm. But while you may enjoy those privileges in America, yet, when you come to this country, where your allegiance binds you by bonds from which you cannot be freed—here, in this country, you must be amenable to the laws which here prevail. And in America, and in the tribunals there, an American citizen, according to the authority of one of the greatest judges that ever graced the bench in that country, would be similarly dealt with under similar circumstances.

The crime of which you have been found guilty would once have been treason in England. It has been mitigated to felony. But by an enactment of the law, which pervades every part of her Majesty's dominions, and under the doom of which you must come when you pass within the precincts of the dominions of the British Crown, by that law it is treason-felony, punishable by penal servitude, to compass the design of deposing the Queen, and to evidence that design by an overt act of the party accused. That is the crime of which you have been found guilty. With respect to you, John Warren and William Halpin, you stand under circumstances varying somewhat in details, but almost identical in substance and in character. On the 5th of March last, it is now established and proven in evidence in these trials, indeed it is a matter of public notoriety, that an insurrectionary movement took place, which amounted to an actual levying of war against the sovereign of this realm. You,

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William Halpin, came to this country, having been previously in America, and having there served in the American army—you came to this country for the purpose of aiding in the organization of that insurrection. You were assisted by others in that project, both in America, before you came here, and here, after you arrived. You, John Warren, came to this country, on an expedition to organize a similar insurrection, after the former one had failed, against the Queen's authority. In principle and character, the cases against both of you were the same.

I have already, in addressing the grand jury, expressed what has been frequently expressed from this bench, and in other places, astonishment that such a project as this should be entertained by sane men. It is amazing to think that men of your period of life—men of mature age and with full capacity for reflection, with all the experience of war and its results, for each of you appears to have been engaged in that remarkable conflict—one of the most remarkable of modern times—between the northern and southern States of America, in which millions were engaged, in which the party resisting the existing authority had numerous armies, accomplished generals, and all the material of modern warfare, and were yet worsted in the conflict—it is astonishing, I say, that notwithstanding all this, you could have entertained such a project as to organize an insurrectionary movement here for the purpose of shaking off the authority of the British Crown. I will not dwell upon the reasons which would show the utter fatuity of such a project, besides those derived from the total absence of all means of warfare, the nearness of this country to England, the presence of the most powerful navy in the world, and of a large and disciplined army within a few hours' distance, furnished with all the appliances of modern warfare. It would be absolutely impossible, if you succeeded for the hour, to maintain your success for a day. But astonishing as such a project was, it pales before the scheme of the *Jackmel* expedition, with a vessel of 115 or 120 tons burden, freighted with forty men, and with, no doubt, a considerable number of arms—one wooden vessel only—proceeding to make an inroad upon the coast of Sligo, in Ireland. Yet it was as much an invasion—it was as much what is termed by the Americans (who I believe first used the word) a filibustering expedition as if it were ten times as powerful, for the design and object were the same. And this was not only after the failure of the insurrectionary design and movement of the 5th of March last, but it was after a variety of trials in this country in which a number of persons were convicted and sentenced to severe penalties—trials which also preceded the transaction of March last.

The law, for the violation of which this prosecution was instituted, is a law primarily applied for the protection of the sovereign and the maintenance of her authority, but it is also applied for the protection of the entire community over which the sovereign reigns, against the terrible calamities that would result from an insurrectionary movement of that character. It is not only the conflict that may take place, in which one party must be worsted, and in

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which success would be hopeless; but it is the amount of confusion and disorder which, even if it be suppressed instantaneously, must follow from the attempt, and the sense of insecurity that would ensue—these would in themselves constitute great calamities, far greater than mere public alarm. All the affairs of the country become disarranged: capital—that most sensitive of all sensitive things—shrinks from dangers of that kind, and the whole coun-

munity feels the mischief. On that subject I will not, however, enlarge; I have done so before, and my brethren of the bench have likewise done so. I speak of it now for the purpose of showing that both of you, John Warren and William Halpin, have been engaged in precisely the same projects—the one to organize the insurrection of March last, and the other to organize a subsequent insurrection; that you both are guilty of not only the same offence in point of law, but of similar acts, and being guilty of similar acts, you must abide by the same doom. We have looked anxiously into the proceedings that took place both here and elsewhere with respect to former charges of a similar character, with the view, on the one hand, of awarding punishment adequate to the crime, and, on the other, of not inflicting punishment beyond the necessity of the occasion. We are of opinion, and I believe I speak the opinion of all our colleagues that have dealt with other cases of this kind, that what might by some be termed leniency would not be mercy; it would be cruelty—cruelty to those for whose protection the law is designed, and cruelty to those who may not have yet joined in projects of this character, and who might be tempted by too great leniency and by too light punishments to follow your examples.

In conformity with former sentences pronounced in this court for similar offences, the sentence we feel we are now bound to award against you will withdraw you for a prolonged period from all that you hold dear in the world. Truly did your brother prisoner say it will be the immuring you in a living tomb. It is impossible for any one who has witnessed these trials not to feel regret, not for the punishment which is to be inflicted, since it is the necessary consequence of the crime, but that you should have merited that punishment by such acts as those that have been proved against you. We lament to see the amount of intelligence, which you certainly exhibited, so misapplied. We, however, can only deal out the punishment which the law imposes. It is our stern and imperative duty not to falter or waver in the administration of the law; and acting under the influence of the obligations which that duty imposes upon us, we feel we cannot pronounce upon each of you, John Warren and William Halpin, a sentence less severe than that you be kept in penal servitude for a period of fifteen years.

The Prisoner HALPIN. It may be fifteen years more, my lord, if you like. I will take fifteen years more for Ireland any day.

The CHIEF BARON. Augustine Costello, we have looked with great anxiety into your case to find anything which would distinguish it from that of the others whom we have now sentenced. They were leaders in each of the proceedings. One assumed the rank of general,

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the other assumed the rank of colonel. They came here with the intention of acting as leaders. You were in a subordinate capacity. You are a very young man, apparently of an excitable temper, and by that I do not mean in the least to disparage you. We have looked into papers found upon you, or traced to you, which we have had an opportunity of seeing—which, fortunately for you, give considerable insight into your character—into the nature of your mind, the course of your thoughts and affections, and a certain amount of cultivation which your letters and other compositions certainly exhibit. There are indications in those writings which lead us to believe that, however you may be impressed now with the views to which you have given utterance, further reflection will lead you to a better consideration of your position, and of the projects in which you have been engaged. We have, therefore, thought that we were at liberty, in your case, to pronounce a sentence of somewhat less severity. Still it must be a severe one, and it will too well correspond with your own description of your anticipated doom. The sentence of the court is that you be kept in penal servitude for a period of twelve years.

The Prisoner WARREN. I would respectfully say, my lord, that I would not take a lease of this kingdom for thirty-seven and a half cents.

The prisoners were then removed.

Mr. Seward to Mr. Stanbery.

DEPARTMENT OF STATE,
Washington, December 21, 1867.

SIR: In connection with the so-called Fenian case of Colonel John Warren and of Colonel William J. Nagle and Eugene Costello, there have been newspaper statements to the effect that the prosecutions are based upon and sustained by evidence and acts done not at all in any place under the sovereignty of Great Britain, but in the United States of America, and not elsewhere; and that the convictions of Warren and Costello rest upon evidence of that class. At the time of writing my communication to you on the 18th ultimo, in regard

to the case of Colonel Warren, I had as yet no such detailed and authentic accounts of the trials as would enable me to direct your attention to the legal questions involved in those statements, with reference to Colonel Warren's case, the only one in which there had been a conviction. With the view, however, of obtaining the necessary grounds for raising the question, I requested the United States minister at London and the United States consul at Dublin to furnish this department with a copy of the statutes under which the proceedings and trials in those cases were had, and also of the indictments, evidence, and proceedings of the trials. I have now obtained the papers thus called for. I have also just now received from the House of Representatives a copy of a memorial of Colonel Warren to that body, in which he presents his statements of the trial and conviction. I now, therefore, lay before you all these * papers, and I respectfully ask your opinion upon the following questions, which arise out of the judicial proceedings thus brought to your notice :

First. Is a naturalized citizen of the United States liable to prosecution and conviction for treason or treason-felony against the sovereign to which he owed allegiance before his naturalization in the United States, for intentions, words, or acts done in the United States after his naturalization, which if the same had been done by him in the sovereignty to which he formerly owed allegiance would have amounted to treason or treason-felony there ?

Secondly. How far is the question affected by the fact that her Majesty's government, prosecuting the offender, declares the allegiance of its native subjects to be indissoluble without its previous consent, and that naturalization under the sovereignty of the United States is inoperative and void as against the primary allegiance to the Crown of Great Britain.

Thirdly. Having arrived at what you shall decide to be the true legal principle in this respect, please give me your views concerning the application of this principle to the convictions already had in the case of Warren and Costello, respectively, and to the proceedings now pending against Colonel Nagle, to the end that any errors which have occurred or may occur in those cases may be corrected, and every possible injustice may be arrested or prevented.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

Hon. HENRY STANBURY,
Attorney General.

Mr. Seward to Mr. Adams.

No. 2114.]

DEPARTMENT OF STATE,
Washington, December 23, 1867.

SIR : Your despatch of the 6th of December, No. 1489, has been received. I approve of the manner in which you have carried out the instructions in my 2087. At the same time, I observe with regret that Lord Stanley has not found it convenient to indicate any practical way of removing the difficulties thus brought to his notice.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

* For enclosure see Mr. Adams's despatch No. 1485, November 29, and accompaniments.

Mr. Seward to Mr. Adams.

[Telegram per cable.]

DEPARTMENT OF STATE,

Washington, December 24, 1867.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c. :

Employ counsel for Burke, at reasonable cost.

WILLIAM H. SEWARD.

Mr. Adams to Mr. Seward.

No. 1502.]

LEGATION OF THE UNITED STATES,

London, December 24, 1867.

SIR : I have to acknowledge the reception from the department of despatch No. 2106, of the 9th of December. It is with great satisfaction that I learn that the government is disposed to view my course in the case of the prisoner Gould, at Manchester, as founded on reasonably strong grounds.

Subsequent events have only contributed to confirm me in my views of the propriety of it. The deplorable consequences of the attempt on the prison at Clerkenwell have contributed much to destroy all further sympathy here with persons capable of devising similar schemes. It would seem as impossible to place them within the category of a "meritorious political movement," alluded to in your despatch, as it would have been with us to shield the incendiary who attempted to destroy the New York hotels, and still more the assassins of President Lincoln and yourself, under the same plea. Accordingly these last were all executed by the decree of our tribunals. The united testimony of all Christian ages established a clear line of distinction between open war and clandestine attempts upon individual members of society. The effect of the one may be to bring about ultimate results of value to the world. That of the other is only to shake the foundations of confidence between man and man, so far as to unsettle society without effecting any public good whatever.

It may be doubted whether at any time since the discovery of the scheme of Guy Fawkes, there has been so much of panic spread among families throughout this community as at this time. The newspapers are filled with alarming reports, and with accounts of the measures of repression contemplated. The consequences may be serious, not so much to the perpetrators of these offences as to multitudes of the very class which they are supposed to intend to befriend. I think it would now be very unsafe for Irishmen to attempt to hold a meeting for any purpose in any great town in England. The government felt compelled to prohibit one which was called here for the declared purpose of disavowing all sympathy with the outrage, on that ground alone. There is danger of a general discharge and proscription of these people, most of whom are laborers earning their daily bread, and a very large proportion of whom are doubtless wholly innocent. The consequences to themselves, not less than to the community at large, may easily be foreseen. The chief sufferers will be those least contemplated at the outset. Under these circumstances, it does not seem to me that the mode of operation thus resorted to can ever deserve to be classed as an incident to a meritorious political movement, or, if pushed much further, is likely to be productive of any better ultimate result than a passionate and vindictive retaliation upon a race, without discrimination between the innocent and the guilty.

In this view of the difficulties of the case it seems extremely hazardous for persons not members of the community to undertake to judge of the propriety

of the course of repression which it may be driven to adopt. Certainly, down to this time, the policy of this government cannot be charged with extreme severity. It has, on the other hand, given rise to more or less of popular dissatisfaction on the ground of its feebleness and lenity. In regard to these conflicting opinions it is my province not to adopt either. I have endeavored only to present to you the exact state of the facts, so as to enable you to judge of the great difficulty in any case calling for intervention of steering clear of offence between them.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington.

Mr. Seward to Mr. Adams.

No. 2115.]

DEPARTMENT OF STATE,

Washington, December 25, 1867.

SIR: Your despatch of the 7th of December, No. 1,490, has been received. The Secretary of War *ad interim* reports that Ricord O'S. Burke was in the volunteer service of the United States from 1863 until the close of the war, when he was serving as captain, and was honorably discharged on the 13th of June, 1865, and that his military record is deemed an honorable one.

By the President's direction I telegraphed to you yesterday to employ counsel for Burke at reasonable cost.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1504.]

LEGATION OF THE UNITED STATES,

London, December 26, 1867.

SIR: I have to acknowledge the reception of a telegram by the cable, dated the 24th instant, directing me to employ legal assistance in behalf of Mr. Burke at reasonable cost.

Unfortunately, the qualification is a difficult one to construe, for the charges would probably be at once multiplied the moment it was known by whom they were to be borne. Mr. Burke has already had assistance provided for him by his friends. I shall endeavor to place the matter in such a shape that the government will only incur the amount of charge which will have been agreed upon on the supposition that his friends are to defray it.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington.

Mr. Seward to Mr. Adams.

No. 2116.]

DEPARTMENT OF STATE,

Washington, December 27, 1867.

SIR: I have received your despatch of the 11th of December, No. 1492, and have carefully read the papers touching the law of expatriation to which you refer.

They are acceptable indications of a disposition in a certain quarter to relieve the two governments of the embarrassments which have arisen from the unnecessary and indiscreet assertion in Great Britain of a principle which has become practically obsolete. It is expected that Congress will, immediately after reconvening, bring the legislative department of this government explicitly into concord with the executive department upon the question. When that shall have been done, the President will be prepared to express his official opinion concerning it for the information of her Majesty's government. You are quite right in saying that it is very desirable to remove the causes of future collision on the subject. At the same time, I think it necessary to say that in view of the failure hitherto to obtain a satisfactory settlement of our complaints against Great Britain which occurred during the late rebellion in the United States, and in view also of the severity which continues to be practiced by the courts of law in Great Britain, discriminating against native Irishmen duly naturalized in the United States, I do not think that a situation exists in the United States favorable to the initiation of negotiations by this department limited to the single purpose of obtaining a revision of the law concerning expatriation.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 1513.]

LEGATION OF THE UNITED STATES,
London, January 8, 1868.

SIR: I have to acknowledge the reception from the department of despatches Nos. 2112, 2112, and 2114.

During the past week the panic occasioned by the affair at Clerkenwell has been slowly subsiding, although the attempts to do mischief have not altogether ceased. Some of the efforts made in Ireland to get possession of gunpowder appear to have been successful.

The projects upon the post office in London through the agency of packets stuffed with explosive materials have generally failed. The most serious of these, which was undertaken at the distributing office in this district, does not appear to have been noticed in the newspapers. No discovery has yet been made of the origin of these movements.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1516.]

LEGATION OF THE UNITED STATES,
London, January 8, 1868.

SIR: I beg to call your attention to a leader in the London Times of this morning, a copy of which I transmit, following up the subject of the law of allegiance discussed in the same paper on the 11th of December last, reference to which was made in my despatch No. 1492, of that date.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

[From the London Times, January 8, 1863.]

The United States Congress is already acting upon the President's suggestion, and the liabilities of naturalized citizens must soon become the subject of serious negotiation. On the 19th of last month there was a debate in the Senate upon a petition soliciting protection in general terms for American citizens domiciled abroad. The immediate occasion of this petition appears to have been the revival of an old dispute with Prussia respecting the alleged claims of that power to the military service of Prussians naturalized in America, but actually residing in the country of their birth. Now that Prussia represents North Germany, and that a rigid system of conscription is established throughout the confederation, the question has acquired a new importance, and will not be solved without difficulty. The debate, however, inevitably expanded into a discussion of the still larger question opened by the Fenian prosecutions in Ireland. Senator Conness, who spoke in a very hostile spirit towards this country, stated that American citizens had been convicted in our courts not only for acts done, but for words uttered in America; and Mr. Reverdy Johnson expressed great indignation at the refusal of a jury *de medietate* to natural-born British subjects afterwards naturalized in America. The matter had previously been referred to the Committee on Foreign Relations, but Mr. Sumner, as chairman of that committee, declared that it would not be shelved there. He added that, in his opinion, the unrestricted permission of emigration by Great Britain, coupled with the doctrine of perpetual allegiance, involved a downright absurdity, and predicted that, on a candid examination, our government would not maintain the latter claim. In the mean time large meetings have been held in various parts of the Union to assert the rights of "foreign-born citizens abroad," and the House of Representatives has passed a resolution urging the Committee on Foreign Affairs to inquire forthwith into the alleged maltreatment of American citizens by the British authorities in Ireland.

We cannot be surprised, and we ought not to be offended, at the keen interest manifested by the Americans in the principle which, as they suppose, is at stake. The whole number of foreign-born citizens naturalized in the United States has been estimated to exceed four millions, at least half of whom are immigrants from British territories, and more than one-third from Ireland alone. If the strict theory of perpetual allegiance were enforced, any of these Irish-Americans who might serve against Great Britain in the armies of the United States would be guilty of treason against his lawful sovereign, and, if captured, might be punished accordingly. Of course, the law would never in practice be carried to this length, but a nation so largely composed of foreign elements must naturally rebel against a rule which, if applied, would produce such consequences. Mr. Sumner, however, went too far when he maintained that it is peculiar to English jurisprudence and is not recognized in the United States. On the contrary, though disputed in one case by an American secretary, it has been admitted, we believe, by all American judges and jurists of repute, down to General Halleck. Mr. Justice Story himself, though he points out that no State can give an extra-territorial operation to its laws by requiring another State to execute them, carefully abstains from denying its right over natural-born subjects returning within its own jurisdiction. He elsewhere affirms this right in express and unqualified language. "An offence," says he, "may be committed in one sovereignty in violation of the laws of another, and if the offender be afterwards found in the latter State, he may be punished according to the laws thereof, *and the fact that he owes allegiance to another sovereignty is no bar to the indictment.*" Nor is this all; for the same eminent authority negatives, as if by anticipation, the untenable notion that American legislation can affect the *status* of natural-born British subjects, or any other persons, in an English court. If our common law cannot govern the rights and liabilities of native Irishmen, so long as they reside in America, it is equally certain that no American law can govern those rights and liabilities when they return to Ireland. Such matters are exclusively within the province of municipal enactment, and it so happens that, whatever conflict may exist between the interests of the two countries, there is here no conflict between their respective codes. This, indeed, is fully acknowledged in one of the resolutions carried at a recent "indignation" meeting in Illinois, which calls upon Congress "to define by law the right of expatriation, recognizing the right of American citizens to change their allegiance, thereby setting an example to Europe, and depriving foreign governments of the plausible objections now urged against our position in this matter."

On the other hand, some misapprehension seems to prevail in America as to the nature of the charges upon which American Fenians have been tried in Ireland. We have not the indictments or a detailed report of the proceedings actually before us, and are not, therefore, in a condition to prove a negative; but we are not aware that any prisoner now under sentence was tried for treasonable acts committed in the United States. No doubt a natural-born British subject might have been so tried under the treason-felony act had the law officers of the Crown thought proper so to frame the charge: but, to the best of our belief, a different course has been pursued, and most, if not all, the party who disembarked from the Erin's Hope were actually tried for offences committed in Ireland, or within three miles of the Irish coast. General Warren, in particular, who has addressed a memorial to the American Senate, alleging that he was in New York when his supposed crime was perpetrated, was a prominent leader among the filibusters who attempted to land arms at Sligo, and one of those who compelled the pilot to take an illegal oath. Had he simply attended Fenian meetings at

New York, and revisited Ireland peaceably, he might never have been arrested at all. It is not difficult to account for the erroneous impression which has possessed the minds of the American public. In the first place, although the actual crime may have been committed on Irish soil or in Irish waters, a great deal of the evidence connecting the prisoners with the Fenian conspiracy related to interviews and conversations at New York. To exclude evidence of this kind would be manifestly unreasonable, but to admit it is a very different thing from treating Fenian recruiting in America as treason against her Majesty, however clearly this principle may be sanctioned by our present law. Again, the rejection of Warren's claim for a jury *de medietate lingue* has been interpreted in America as if it indicated an intention to strain the obligations of allegiance, whereas the point was started by the prisoner, and not by the Crown, and could not have been decided otherwise by any court, whether English or American. But the less ambiguous the existing law is, the stronger are the arguments for its revision, and we cannot but regret that more than fifty years have elapsed since the Peace of Ghent without an effort to place it on a more satisfactory footing. It is not, indeed, correct to identify the issue now raised with that which led to the war of 1812, for Great Britain then insisted not only on the indefeasible allegiance of her subjects, but on her right to visit and search American ships for the purpose of impressing them. Still, the conclusion of that war afforded a good opportunity of limiting once for all the privileges and duties of allegiance. Upon grounds of international policy, it is highly expedient that what ought to have been done in 1814 should be done now, before new difficulties arise. Should any overture have been made with that object by the American government, we trust it has been favorably entertained by Lord Stanley; and if no such overture has been made, we trust Lord Stanley will take the initiative in proposing a basis of settlement.

Mr. Adams to Mr. Seward.

No. 1517.]

LEGATION OF THE UNITED STATES,

London, January 11, 1868.

SIR: I have to acknowledge the reception of your despatch, No. 2115, of the 25th of December, relative to the case of Ricord O'S. Burke.

Mindful of the limitation placed upon me by the terms of your telegram, I determined to authorize Mr. Morse, the consul at this place, carefully to investigate the matter, and without committing the government, to bear all charges in the way that has led to such great expense at Dublin, to promise such funds as may be expected to answer all useful purposes. He reported to me a day or two since that he had arranged the matter at a limit of one hundred and fifty pounds. This, however, was based on the expectation that the trial would be held in London. Since then the preliminary examinations have been closed, and the prisoner has been held over to take his trial at Warwick. Whether this will make any difference in the cost of retaining the best counsel I do not yet know.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Seward to Mr. Adams.

No. 2119.]

DEPARTMENT OF STATE,

Washington, January 13, 1868.

SIR: Your despatch of the 24th of December, No. 1502, has been received and laid before the President.

I thank you for the very interesting account you have given of the condition of panic which recent events connected nearly or remotely with the disturbance in Ireland have produced throughout the British realm. The ferocious and felonious character of the proceedings which attended the rescue at Manchester, and the attempt to destroy the prison at Clerkenwell by explosion, are clearly perceived in the United States, and have had some influence in checking the course of

public sentiment in regard to the great political question in which large masses of Irishmen at home and abroad are arrayed against the government of Great Britain. Notwithstanding this modifying influence, however, it is plainly to be observed that the sympathies of the people of the United States are every day profoundly more moved and more generally moved in behalf of Ireland. I have continually endeavored to impress upon the British government the importance of eliminating from the so-called Fenian excitement, as far as possible, certain legitimate causes of irritation and jealousy between the people of the United States and the people of Great Britain. I have had less success than I hoped, and less, I am sure, than would have been conducive to the interests of both countries. The pretence of the judge on the trial of John Warren, not disavowed by her Majesty's government, that although a duly naturalized citizen of the United States, he still remains a subject of the Queen of Great Britain, amenable in that country to laws which are invalid there against native-born citizens of the United States, has awakened a general feeling of resentment and deeply wounded our pride of sovereignty. The people are appealing to this government throughout the whole country from Portland to San Francisco and from St. Paul to Pensacola. This sense of injustice works harmoniously together with a sore remembrance that the British government in the late rebellion favored the overthrow of the United States by illegitimate processes, even at the cost of perpetuation of human slavery.

Perhaps after this popular protest shall have found earnest expression in both houses of Congress, British statesmen may perceive that a restoration of cordial and friendly relations and sympathies between the two countries is impossible while the causes of irritation to which I have referred are allowed to endure.

You are not charged to communicate this despatch; but you need affect no special reserve in regard to the facts herein communicated.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

MISCELLANEOUS PAPERS.

Mr. Killian to Mr. Seward.

WILLARD'S HOTEL,
Washington, D. C., February 16, 1868.

SIR: I have been deputed by a public meeting of the citizens of New York, held in and about Cooper Institute, on the evening of the 12th instant, to represent to his Excellency the President their anxious interest in the fate of American citizens immured in English prisons, and their expressed hope that he will cause the subject of their rights as such citizens to receive immediate and merited attention.

I have also been instructed by the meeting—numbering some forty thousand souls—to lay before his Excellency petitions and documents which may enable him to sympathize with their feelings of indignation at what they consider infringements on international law by officers of the British Crown, and gross official remissness on the part of our diplomatic representative at the court of St. James. The better to fulfil my mission, may I request that you favor me with information of the hour when I might expect and secure an interview with his Excellency?

Awaiting the honor of a reply, I am, Mr. Secretary, your respectful and obedient servant,

B. DORAN KILLIAN.

Hon. WILLIAM H. SEWARD,

Secretary of State of United States.

Mr. Hickcox to Mr. Seward.

MILWAUKEE, May 29, 1866.

DEAR SIR: I am informed that Thomas E. Blackwell, whose father resides in this city, is imprisoned in Clonmell jail, Tipperary, Ireland.

I am also informed that he is a citizen of the United States, and was a soldier in the 25th Illinois infantry. The ground upon which he is restrained of his liberty is, as I am informed, that he has been suspected of sympathizing with Fenianism.

I write you to see if anything can be done for him.

Yours, truly,

JAMES HICKCOX.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Hayes to Mr. Seward.

THIRTY-NINTH CONGRESS,
Washington, D. C., June 26, 1866.

SIR: I have to request information as to James Smith, native of Ohio, named in the communication made from the Department of State on the 21st instant, relative to Americans imprisoned in Ireland.

Is there information that he has been released, or is he one of the two who were held for trial?

Respectfully,

R. B. HAYES.

Hon. WILLIAM H. SEWARD,

Secretary of State.

Mr. Owen to Mr. Seward.

PHILADELPHIA, June 29, 1866.

SIR: I have to request that the papers forwarded by me to your department, in the case of Colonel Michael Kirwan, of the thirteenth Pennsylvania cavalry, who is a prisoner in Mount Joy jail, Dublin, Ireland, be returned to me. His numerous friends and late comrades in the army are greatly disappointed that he has not been released from durance, upon the ground of his being an American citizen, and by the interposition of the government of his adopted country.

He has no knowledge of the nature of the charges made against him. Broken in health by reason of his exposure in the service of the government of the United States, his speedy release is imperatively demanded on grounds of humanity.

It is a serious detriment to the growth of loyalty and veneration for our government, that its citizens, who perilled their lives in defence of their country, can be arrested with impunity and imprisoned without trial by foreign governments, and held as prisoners against the solemn protest of our representatives.

I beg, therefore, again to call your attention to this great wrong, perpetrated by a friendly power, in whose behalf and for the maintenance of our treaty stipulations with whom the national authority was so lately exerted.

If, however, no further efforts can be made through your department, I beg that the papers in his case may be returned to me, in order that I may use them

to base an application for his release, to be made to the government of Great Britain direct. Among the papers are the colonel's commission, his father's naturalization papers, and other important documents.

I am, with great respect, your obedient servant,

JOSHUA T. OWEN,

Counsel for Applicant.

Hon. WILLIAM H. SEWARD,

Secretary of State.

[Received March 16, 1867.]

YOUR EXCELLENCY : The people of Ireland have issued the following declaration of war against Great Britain :

THE IRISH REPUBLIC.

After seven centuries of outrage and misery unequalled in the history of humanity ; after having seen our laws, our rights, our liberty, trodden under foot by the foreigner, our lands pass from the Irish farmer to the Irish or foreign usurper, and the rightful owners of hundreds of years supplanted by cattle destined to supply the markets of England ; after having seen our skilled workmen driven into exile, our men of thought and action to imprisonment and the scaffold ; having no longer either lands to cultivate, laws, or acknowledged rights to invoke ; in a word, having nothing pertaining to man save the faculty of suffering or the determination to fight, we cheerfully choose this last resort.

All men have a right to liberty and happiness. Believing that there can be no durable liberty or happiness except upon the basis of free labor, and that there can be no free labor when the means of labor is not free ; considering, besides, the first means of labor is the soil, and that the Irish soil, instead of being in the hands of the Irish workingmen, is held by a selfish and despotic oligarchy, we declare it to be our determination to repossess ourselves of that soil by force.

Considering that all men are born with equal natural rights, and that by associating themselves together to protect one another and share public burdens, justice demands that such association should rest upon an equitable basis, such as maintains equality instead of destroying it, we declare that we aim at founding a republic upon universal suffrage, securing to all the intrinsic value of their labor.

We declare that we wish absolute liberty of conscience, and the complete separation of church and state.

The public expenses will be paid by a progressive capitation, (labor being free from any import.)

Calling upon God and mankind to witness the justice of our cause and the intensity of our sufferings, we declare in the face of the world, in order to succeed in reconquering the inalienable rights that all men receive at their birth, we take up arms to combat the dominant oligarchy ; and as its strength dwells in its credit, based upon its property, we will employ to destroy it every means that science, or even despair, shall place within our reach. Wherever the English flag waves over English property it shall be torn down, if it be possible, without *fear or truce* ; and we swear in the sacred name of our country, by the sufferings of those who now endure the tortures of living tombs for the cause, by the dear and revered names of those who have died for the freedom of Ireland, by our honor and that of our children, that this war shall cease only when the Irish republic shall be recognized, or when the last man of our race shall lie in his grave.

Republicans of the entire world, our cause is yours! Our enemy is your enemy. Let your hearts be with us. As for you, workmen of England, it is not only your hearts that we wish, but your arms. Remember the starvation and degradation brought to your firesides by oppressed labor. Remember the past, look well to the future, and avenge yourselves by giving liberty to your children in the coming struggle for human freedom.

Herewith is proclaimed the Irish republic.

By order of the provisional government of Ireland :

It is not our purpose to enter into detail of the grievances and injuries inflicted on the Irish people in Ireland, during seven centuries, the unprovoked invasions of her soil, the burnings of homes, the slaughter and butchery of her sons, the cruel devastations, the systematized famines, the banishment of her children by the inappeasable tyranny of the government of England. Those grievances and injuries are witnessed in her forcible maintenance of a foreign oligarchy, who rob and fatten on the industry of a race who disavows them; in the smoking ruins of the cabins of the humble; in the deserted castles and palaces of an honorable and princely ancestry; in the solemn silence of her graveyards, wherein repose the remains of more murdered human victims than any other empire at any period in the history of the world has ever sacrificed on tyranny's blood-stained altars within equal limits; in her fruitful fields, intended by the Creator for the immediate support of human beings, but converted into pastures for cattle by alien robbers, who bear none of the burdens to which the rightful heirs of the soil are subjected; in the deprivation of her commerce; in the destruction of her manufactures by British legislation; in the disintegration of communities, the separation of families, and the compulsory exile of millions who, united in one nation on their own land, could serve humanity and advance civilization.

The acts of inhumanity and barbarity perpetrated are innumerable. They have shocked all Christendom, and it is impossible to find a nation whose war was more justifiable, according to all Divine laws and human rights, and according to the common sense of mankind, than that now waged by Ireland against England for the assertion of her national independence.

The precedent established by the government of England in granting belligerent rights to the late rebels of the United States of America, immediately after the commencement of hostilities; the promptitude of the Irish people in Ireland in declaring their firm determination to give neither men nor money to England in case a rupture occurred between Great Britain and the United States consequent on the Trent difficulty; the sacrifice of tens of thousands of the Irish race during the recent war for the maintenance of this republic, which the monarchical governments of Europe, more especially that of England, conspired to destroy; the natural sympathy which the people of this republic should extend to those struggling for freedom, under difficulties equal to if not greater than those under which Washington and his compatriots labored for the liberation of this country from British misrule; the fact that the Irish republic under a provisional government, is now, and has been for several days, actually engaged in armed and forcible hostilities against the government of Great Britain; all these reasons have impelled the Irish people to represent to your Excellency their case, and to ask that the Irish republic shall be respected by the government of the United States of America, as a government actually in existence, and at war with Great Britain; and that the government of the United States insist that the rights to which the said Irish republic are entitled during the war shall be respected by her adversary, the government of Great Britain, and according to the rules which nations should reciprocally observe when deciding their differences by arms.

Mr. McClure to Mr. Seward.

NO. 1 PERRY STREET,
New York, April 16, 1867.

DEAR SIR: You will please pardon me for thus addressing you, and but for the urgency of the case I would gladly refrain from this recital.

I appeal in behalf of my brother, John McClure, who, I have cause to believe, has been arrested in Ireland on the charge of Fenianism.

He is an American, twenty years of age, served in the federal army during the rebellion, and was honorably discharged at the termination of the war. Being of an adventurous disposition, he became involved in the Fenian movement, and left here a few months ago for Ireland.

This communication is addressed to your sympathies as an individual of influence and an American, and, although, I feel I cannot ask your interference with the British government in my brother's favor *officially*, nevertheless I trust you will find it in your power to advise the representative of the United States in Great Britain and Ireland, at the present juncture, to grant to Americans arrested there protection consonant with their antecedents and privileges.

I have the honor to subscribe myself, your obedient servant,

WILLIAM J. MCCLURE.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c.

Mr. Smith to President Johnson.

WASHINGTON CITY, D. C.,
April 22, 1867.

DEAR SIR: My brother is at this time a prisoner in Ireland, and sent up by a magistrate to jail for high treason—for having in his possession a revolver.

He is an Ohioan by birth; has served nine years in the regular army; was second lieutenant in Edwards's battery; was in fifty battles in the late war, and when the war was over he resigned his commission and went to Ireland to hunt up a will of my grandfather, who left £19,000 to my mother. He was governor of Jamaica.

My brother is *no Fenian*. You will find papers on file in the proper department, signed by the Hon. William S. Groesbeck, George H. Pendleton, Theo. Cook, James J. Faran, and General Len. Harris, late mayor of Cincinnati, Ohio, and now collector of first district, State of Ohio. They all know my brother well.

If I could explain to you in person, I will show you a letter from my brother, now in Mount Joy prison, Dublin, Ireland. This is the second time he has been arrested.

The above-named men signed his papers one year ago. My brother was then charged with complicity with Fenians, and kept in Mount Joy prison fifteen weeks, before this government could have him released.

It will not take me two minutes to explain the case to you.

Your obedient servant,

BART. SMITH.

His Excellency ANDREW JOHNSON,
President of the United States.

The substance of the above letter was also contained in a letter to Mr. Seward, Secretary, &c., dated 23d April, 1867.

Mr. James Smith to Mr. Bart. Smith.

MOUNT JOY PRISON,
Dublin, March 22, 1867.

MY DEAR BROTHER: I am again writing to you from where I wrote a year since. Little thought after my release that I would be in this place again; but so it is, with this difference, that I am to be tried for high treason for merely having a revolver in my possession at the time of my arrest.

I was arrested on the morning of the 6th of March, at one of the police stations of Rathmines, (a portion of the city of Dublin,) and on the 18th, in Kilmainham jail, (the press and public excluded,) I was examined by a magistrate and committed for trial for high treason. I will need some money to conduct my defence, at least £30—40 if they can be spared. Brother William, I have no doubt, will advance me fifteen or twenty pounds, and my niece Elizabeth ten pounds, as I advanced money to her when she needed it, and I am confident she will advance to me at this particular time, if she knows I wish her to do so. Bart., write to them at once; don't put it off, as I may be tried in seven or eight weeks—perhaps sooner.

In relation to the property, I've done what I could do in London, but could find no will drawn up by Sir Andrew Crotty, either in grandmother's favor or anybody's else. If I get out of this place I will, you can rest assured, sift it all to the bottom before I go back. Do not fail to send that money, as I rely on you.

Give my love to Jane, Ann, and the rest; also my kind regards to Ned Bennett; tell him I would like very much to hear from him. Tell him I send my regards to his folks.

Yours, as ever,

JAMES SMITH.

I wrote some two weeks since to the consul of this city, but he has not condescended, up to this time, to call on me.

Send a check on the Bank of Ireland, Dublin, to James Smith, senior, to the care of governor of Mount Joy prison, Dublin, as I believe there is another of my name in this place. You had better arrange it so as to have but one check; for that reason you had better send it.

I am, &c.,

J. S.

The President to Mr. Seward.

[Executive.]

APRIL 23, 1867.

Case of James Smith, senior, captain late United States volunteers, arrested in Ireland, charged with high treason to the British government, is an American citizen, an Ohioan by birth.

Respectfully referred to the honorable the Secretary of State for his action.

R. MORROW,
Assistant Secretary.

Mr. Rogers to Mr. Seward.

LAW OFFICE OF JAMES J. ROGERS, NO. 8 WALL STREET,
New York City, April 29, 1867.

SIR: I have the honor to inform you that on Saturday, the 27th instant, I received from William Jackson, an American citizen, a letter dated at Kilmain-

ham jail, Dublin, Ireland, April 9, 1867, in which the writer states that he was arrested in the act of leaving the brig Nelo Draper, on the 23d February, 1867, and conveyed to Mount Joy prison, under the *habeas corpus* suspension act. On the 3d day of April he was brought before a magistrate, and on the information of one John Devanney he has been committed to stand his trial on the charge of high treason. This John Devanney on oath swore that he is a native of Ireland; that he was at school in New York about seven or eight years, between the years 1850 and 1858; that he got employment in the cloth department of a clothing house, where he remained until the commencement of the year 1866; that about October, 1865, he joined the "Brothers Sheil's Circle" of the Fenian Brotherhood, in New York; that he saw the writer of the letter, William Jackson, at a Fenian meeting held at Jones's Wood, New York city, about the month of March, 1866; that Jackson made a speech on that occasion, and that he, Jackson, was introduced by B. F. Mullen on that occasion, as Captain John McCafferty. This, Devanney declared, was the only time he had ever had the pleasure of seeing him, Jackson, until he saw him at Mount Joy prison. The writer wants me to make certain inquiries in relation to this John Devanney, and wishes me to write to you in reference to his, the writer's, case, and says, "all I want is a fair trial." He adds that he is to be put on his trial as John McCafferty.

I would also beg leave to state to you that I perceived in the telegraphic despatches, reported in the newspapers of yesterday, that the trials for high treason had already (the day previous) commenced in Dublin. It is fair to presume that the writer of the letter cited was in great danger of being arraigned for trial and tried on Saturday last, the 27th instant, and without venturing to anticipate the verdict of a jury impanelled according to the well known system of the British government in like cases, it nevertheless would appear to be the duty of those who have the power and the means of carrying it out, to communicate with the government of Great Britain in order that sufficient time might be allowed to investigate, in this country, the good or bad character of the informer, and the truth or falsity of his statements in the premises, and to obtain such delay as may be necessary to secure an American citizen a fair and impartial trial even in Dublin.

I have already made extensive inquiries concerning the alleged informer, Devanney, and have ascertained facts in relation to his private character, in this country, which I desire to embody in the shape of affidavits, whose relevancy and materiality no person slightly acquainted with judicial proceedings can doubt. Copies of those affidavits, when prepared, I shall be happy to transmit to your department. Their preparation, however, will obviously require a few days' time; but, when ready, they cannot possibly reach the prisoner in less than from fifteen to eighteen days. It will be perceived by the department that the prisoner has been guilty of no laches in applying for the proof designated. He was arrested on the 23d of February, but received no information, for none was filed against him, as to the cause of his arrest, until the 3d day of April—the government of Great Britain keeping him in ignorance of the charges against him during the space of one month and eleven days. On the 9th of April, only six days after he was brought before a magistrate, he writes to me, and his letter only reaches this office on the 27th instant.

The charge of high treason against the British government by an American citizen would seem untenable even in a British court. An American citizen owes no allegiance to the British throne, and cannot be guilty of a breach of that which he does not owe—cannot be guilty of treason. Treason is a violation of the allegiance which the citizen or subject owes to the government or sovereign. The relation of sovereign and subject does not exist in this case. It will be perceived, therefore, that the prisoner has a good defence, under British law, to the charge made against him.

Moreover, a question arises, in this case, which demands the most serious consideration of the American government. Admitting the prisoner identified by the informer to be the Captain McCafferty who made a speech at Jones's Wood, in the United States, is it conceded that American citizens must answer in British courts for the exercise of the freedom of speech in independent America? If not, it would seem the positive duty of the American government to put a stop at once and forever to the presumption of any foreign power who would seek to hold American citizens responsible to such foreign power for the use or even the abuse of the right of free speech, heretofore exercised in this country. This is a matter which belongs to the *whole nation* to understand. The assertion, and, if need be, the forcible vindication, of the rights and honor of our fellow-citizens abroad, will bring to your back the people of the *whole nation*, and crown your administration of the State Department with immortal fame.

Therefore, I would take the liberty of requesting, most respectfully, that immediate application be made by telegram from your department to the proper authorities in Great Britain for a postponement of at least four weeks of the case referred to, and that such further and additional steps be taken by you, in your official capacity, as your own exalted experience and patriotic prudence may dictate in the matter.

I am, very truly, your obedient servant,

JAMES J. ROGERS,
Attorney, &c.

HON. WILLIAM H. SEWARD,
Secretary of State, &c.

Mr. Smith to Mr. Seward.

CINCINNATI, May 7, 1867.

DEAR SIR: I was in Washington city on the 23d of last month, in relation to a brother of mine now in prison in the city of Dublin, Ireland. He has been sent for high treason, for only having in his possession *a revolver*. I saw the President in relation to the matter, and he gave me a paper with the statement of the case in full. You also have a letter of his, on file in your office, from Ireland. One year ago he was arrested and lay in prison for fifteen weeks, for complicity with Fenians, and was not released until it was by your orders. He is there in relation to an estate of my uncle's, who was governor of Jamaica. My brother was in the regular army as second lieutenant, and served all through the late war, and was in nearly every battle during the late rebellion; he belonged to third artillery, Edwards' battery. He is a Cincinnati by birth. You will find all the papers on file in your department, signed by Hon. Wm S. Groesbeck, Hon. George H. Pendleton, Hon. Theo. Cook, Dr. Vattier, and James J. Faran, editor of Cincinnati Enquirer.

Will you please inform me what action you will take in relation to the matter and oblige

Your obedient servant,

BART. SMITH,
No. 396 Court street, Cincinnati, Ohio

HON. WILLIAM H. SEWARD,
Washington, D. C.

Mr. Seward to Mr. Smith.

DEPARTMENT OF STATE,

Washington, May 20, 1867.

SIR: The President has referred to me your letter representing that your brother, James Smith, a citizen of the United States, has been arrested and imprisoned, in Ireland, on the charge of treason. On examining the papers on file to which your letter refers, it appears that your brother was discharged from a previous imprisonment in Ireland on the 2d of June, 1866, on condition of immediately leaving Ireland, and not returning there. There is nothing on the files of the department to show whether your brother failed to leave Ireland, and whether, leaving it, he has returned there again; nor, indeed, anything relative to him since the time of his release from his first imprisonment. It is necessary to have information on this subject, in order to be able to give proper instruction to the minister of the United States at London; and I will thank you to communicate such information at your earliest convenience.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

BARTHOLOMEW SMITH, care of General L. HARRIS,

Collector of Internal Revenue, 1st district of Ohio.

Mr. McClure to Colonel O'Beirne.

[Telegram.]

NEW YORK, *May 23, 1867.*

Colonel J. R. O'BEIRNE,

Register of Wills, 76 K street, north :

Have received despatch that John McClure pleads guilty of Fenianism at Cork, and asks Seward to save his life. See Seward, and answer by mail immediately.

W. J. McCLURE, 207 *Pearl street.*

Mr. Oulahan to President Johnson.

NO. 663 PENNSYLVANIA AVENUE,

Washington, D. C., May 27, 1867.

SIR: I respectfully beg leave to enclose a telegram which I received from New York late last night, in reference to Colonel Thomas F. Burke's case. It appears he is to be executed on Wednesday next, 29th instant.

Colonel O'Beirne desires me to state to your excellency that he joins with me in again appealing to you in behalf of Burke.

Burke's friends in New York are anxiously awaiting a despatch from me, and I beg, Mr. President, that you will not deem it improper to ask if anything has been done in behalf of that brave soldier.

Respectfully, your obedient servant,

RICHARD OULAHAN,

Chairman Committee Irish Citizens.

His Excellency ANDREW JOHNSON,

President of the United States.

Mr Griffin to Mr. Oulahan.

[Telegram.]

NEW YORK, May 26, 1867.

R. OULAHAN,

Care Third Auditor's Office, Treasury Dep't, or 663 Penn. avenue :

You and the other gentlemen will please take immediate steps in regard to General Tom Burke.

Respectfully,

A. A. GRIFFIN,
No. 5 Franklin street.

Mr. Rogers to Mr. Seward.

LAW OFFICE OF JAMES J. ROGERS,
No. 8 Wall street, New York City, May 29, 1867.

SIR: I have the honor to acknowledge the receipt of your communication of 27th instant, in reply to mine of the 18th instant, in regard to the case of William Jackson, otherwise John McCafferty, in which you state that my letter of the latter date had been received, and a copy thereof transmitted to Mr. Adams, "who is acting under proper instructions on the subject," and in which you further state that any reliable proofs of the innocent character of Mr. McCafferty's visit to Europe, or any evidence tending to refute the accusations under which he was tried and sentenced, might prove useful if forwarded to your department.

While I feel bound to thank you for the promptitude with which you have acknowledged the receipt of my humble communications on the subject of this letter, I, nevertheless, am inclined to say that I do not deem it necessary to furnish any proofs of the innocent character of Mr. McCafferty's visit to Europe, or any evidence tending to refute the accusations under which he was tried and sentenced, and with all due respect will proceed to state the reasons on which I have arrived at this conclusion.

In the first place, proofs of innocence in any case are never required by any civilized government anterior to proofs of guilt. The affirmative of guilt, or of guilty intent, is on the prosecution. A defendant or a prisoner should never be put upon the proofs of his innocence until he be proven guilty. This is a maxim of English law which will be not disavowed by any English court, and certainly not by an American cabinet. Every man is presumed innocent until he is proved guilty. Hence the innocent character of Mr. McCafferty's visit to Europe must be presumed and accepted by both the English and American governments until incontestible and indisputable proofs are introduced to the contrary; proofs by witnesses bearing the ordinary qualifications of good character, disinterestedness, and honesty. The law of nations confers on the subjects of any civilized state the right of ingress and egress into and from all other civilized states, subject to the ordinary police regulations. In the "treaty of amity, commerce, and navigation between his Britannic Majesty and the United States of America, by their President, with the advice and consent of their Senate," done at London November 19, 1794, it was provided that :

ART. 14. There shall be between all the dominions of his Majesty in Europe and the territories of the United States a reciprocal and *perfect* liberty of commerce and navigation. The people and inhabitants of the two countries respectively shall have liberty, *freely and security*, and without hinderance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places, and rivers within the dominions and territories aforesaid, to enter the same, *to remain and reside there without any limitation of time*; also to hire

and possess houses, and warehouses for the purposes of their commerce, and generally the merchants and traders on each side shall enjoy the most complete protection and security for their commerce; but subject always, as to what respects this article, to the laws and statutes of the two countries respectively.

Mr. McCafferty had, therefore, both under the law of nations and of the language of the treaty cited as one of the people and inhabitants of the United States of America, the right freely and securely and without hindrance and molestation "to go into the lands of her Majesty the Queen of Great Britain, and to remain and reside there without any limitation of time." Neither the law of nations nor the treaty required him to furnish "any reliable proofs of the innocent character of his visit before he entered British soil. He went there in the exercise of an absolute right which no government, not even that of Great Britain, can question or qualify to the extent of preventing a landing by him on British soil. I am not unaware that on the proceedings before the "special commission," now sitting in Dublin, an effort was made to prove that while in America Mr. McCafferty was connected with an organization called the Fenian Brotherhood, whose object was alleged to be the overthrow of British power in Ireland, and to prove that at an alleged meeting of American citizens at Jones's Wood, in March, 1866, for the purpose of expressing sympathy with struggling nationality, Mr. McCafferty was present and delivered an address. These allegations were attempted to be proved by the testimony of an individual named John Devanney, and by that of no other witness whatever. I had the honor of transmitting to you on the 14th of May, instant, original affidavits of four respectable citizens of the State of New York, who set forth the character of Devanney to be as bad as, if not worse than, that of many convicts of our States' prison. Were those affidavits in time for the "trial" or other proceedings before the "special commission" referred to, they could not fail, if permitted to be read, to impeach the statement of the only witness who had a right to say against the presumption of the "innocent character of Mr. McCafferty's visit to Europe." Those affidavits cannot be contradicted, in either the general or special statements as to the character and acts of Devanney, and it is respectfully urged that the American government should regard those affidavits as uncontradicted and as true, and regarding them as true, that all the statements of Devanney which would reflect on the "innocent character of Mr. McCafferty's visit to Europe" are false, and not to be taken into account by either the American or British government. To add to the disgrace of this witness, who was in fact the corner-stone of the fictitious fabric by which it was sought to convict McCafferty, and without which he could not be convicted, he testified that he had been paid by the British government to play the infamous *role* of informer on American citizens, exercising the prerogative of citizenship in the United States. If the British government should still believe the testimony of its paid witness, and disregard the infamy of his previous and present life, has the American government no remonstrance to make against the disreputable and undignified practice of hiring and paying spies and emissaries to pry into the secrets of our citizens at their very doors, and mayhap of our government in its public buildings, when any of our citizens travelling in foreign lands may suddenly find his progress arrested and his life in jeopardy in consequence of the perjured statement of some absconding thief or dissolute renegade? If the conversations in private and the speeches in public of American citizens are to be made the basis of prosecutions at the bidding of some foreign official whom history and republicanism may pronounce a despot, what American citizen is safe, and in what country outside of this are his rights and dignity to be respected? We here are different from every other nation in the world. The spirit and life of our national existence is republicanism. In the abstract and in practice this great idea is irreconcilably opposed to monarchy. From the moment our eyes first behold the stars and stripes we become indoctrinated with an enthusiastic love of freedom; an intense

detestation of despotism in whatever form, under whatever guise, or under whatever name it shows itself. We regard monarchy as despotism. This is a part of our education. We of this generation received it from that which is passing away. We have become practically convinced of the teachings of our forefathers, and we have seen a limit placed to the darkness of tyranny and an expansion given to the light of freedom which no prior generation had the felicity of viewing. From the abundance of our hearts our mouths have spoken. From an overflowing sense of the blessings we enjoy we have said to the men of Erin, "Be free!" We have said to the men of France, "Be free!" We have said to the men of Hungary, "Be free!" We have said to the men of Crete, "Be free!" We have told them—we have told all struggling peoples—"Be free! you have our sympathy." In this respect the sovereign citizens of America are antagonistic, theoretically at least, to the sovereign monarchs of the Old World. In this respect our great republic is theoretically in opposition to every monarchy on the face of the earth. This is our distinctive characteristic as a nation. Every revolution or attempted revolution which has convulsed kingdom or dukedom in Europe during the past century has been in imitation, if not in propagation, of the great republican idea as practically carried out in this country. Every American citizen who travels through Europe in his own plain and modest manner is silently a propagandist of our doctrines. Every king and every constable in Europe are in their turn the enemies of our republican formation, and regard us as the uncompromising foes of their dynasties and legitimacy. They designate America as the "laboratory" of revolution in Europe. In a military and naval point of view, the ocean, which has outlived so many empires, is our friend, and is a great physical obstacle in the way of crushing us out of existence. Another obstacle is *their own people*. For, dare they attack us on our republicanism, their subjects would soon arise and proclaim themselves sovereigns. Hence policy is resorted to, and instead of being crushed, we are courted; instead of being annihilated, we are fawned upon. But this is only policy. There is no heart in diplomatic compliments and no sincerity in statesmen flattery. The great revolution goes on. It may be unseen here, or unheard there, but it is irrepressible, inevitable. Hence it is that every American citizen visiting Europe is looked upon by the "authorities" with more or less suspicion. If an American citizen who reads Edmund Burke or Robert Emmet, and who pronounces in this country an opinion or sympathy for the people for whom the one pleaded and the other died, may be arrested in England or Ireland, why may not some admirer of Victor Hugo be arrested in France, some contributor of "material aid" to Kossuth be arrested in Austria, some gentlemen who attended the meeting at Cooper Institute a few months since to express sympathy with Crete be arrested in Turkey? If McCafferty may be arrested in Ireland for an expression at Jones's Wood, New York city, of sympathy with an oppressed people, why may not Mr. Henry Ward Beecher be arrested during his pilgrimage in the Holy Land by some emir of the Grand Vizier for his speech in favor of the Cretans? How many are the American citizens who have not pronounced the most decided opinions on the subject of monarchy, and how few are exempt from arrest on like grounds? It will thus be seen how great is the danger of permitting a precedent such as the British government has set in the case of Devaney to pass without serious consideration. If the privilege be accorded to the British government to watch our citizens and report their speeches made here, and then to arrest such citizens after the lapse of months or years, when innocently visiting Europe, no citizen is safe; citizenship becomes worse than a farce; it becomes a snare to entrap the confiding republicans of the world, and then hand them back to the tyrannies from which they have escaped.

In the second place, William Jackson, otherwise John McCafferty, was tried and sentenced under the accusation of high treason. In my first letter to your

excellency, dated April 29, 1867, in relation to this matter, I took the liberty of saying :

The charge of high treason against the British government by an American citizen would seem untenable even in a British court. An American citizen owes no allegiance to the British throne, and cannot be guilty of a breach of that which he does not owe; cannot be guilty of treason. Treason is a violation of the allegiance which the citizen or subject owes to his government or sovereign. The relation of sovereign and subject does not exist in this case. It will be perceived, therefore, that the prisoner has a good defence under British law to the charge made against him.

The doctrine thus briefly stated I find sustained by authority, by reason, and by mature reflection. Your excellency will readily remember that passage of the most celebrated commentator on the English law wherein he mentions the nature of *allegiance* as the tie, or ligament, which binds *every* "*subject* to be true and faithful to his sovereign (*liege* lord, the King, in return for that protection which is afforded him, and truth and faith to bear in life and limb and earthly honor, and not to *know* or hear of any ill intended him without defending him therefrom. And this allegiance was distinguished into two species, the one *natural and perpetual which is inherent only in natives of the King's dominions*; the other *local and temporary, which is incident to aliens also*. Every offence, therefore, more immediately affecting the royal person, his crown or dignity, is in *some degree* a breach of this duty of allegiance, whether natural and innate or local and acquired by residence." It will be observed that the learned commentator does not assert that every offence more immediately affecting the royal person, his crown or dignity, is in *an equal degree* a breach of this duty of allegiance whether committed by a native-born subject or an alien. He merely says that it is in *some degree* a breach of this duty. It is not to be supposed that so zealous a defender of the royal prerogative as Sir William Blackstone would have omitted or neglected, if such had been the received opinion of his cotemporaries at the bar, to express the rule that every offence against the royal person, crown or dignity was in *an equal degree* a breach of allegiance whether by native or foreign-born. The degrees of criminality must have been accordingly different. If a native-born subject committed a breach of this duty he might be pronounced guilty of high treason, whereas if a subject of a foreign power committed such breach he could only be pronounced guilty of some offence of a lesser degree of enormity than high treason. This view is borne out by the punishment for high treason, which is death or imprisonment, at the will of the sovereign, mayhap for life. The penalty of death was a penalty for the breach of a natural and *permanent* duty, a duty lasting as long as a man's life. It would accordingly follow that an alien who could be guilty only of a breach of a temporary duty could not be punished by death, or by any *permanent* or perpetual punishment, or by any punishment more than temporary, and if the alien chose to leave the country, and thus sever the *temporary allegiance* which it is claimed he owed, the government had not the right to detain him.

Treason, he continues, (*proditio*), in its very name, which is borrowed from the French, imports a betraying, treachery, or breach of faith. *It therefore happens only between allies*, saith the Minor; for treason is indeed a general appellation, made use of by the law, not only offences against the king and government, but also that accumulation of guilt which arises *wherever a superior reposes a confidence in a subject or inferior, between whom and himself there subsists a natural, a civil, or even a spiritual relation*, and the inferior so abuses that confidence, so forgets the obligations of *duty, subjection, and allegiance*, as to destroy the life of such superior or lord. When *disloyalty* so rears its crest as to attack even majesty itself, it is called, by way of eminent distinction, *high treason*, (*alta proditio*.)

In defining the "*local allegiance*" the same author says it is "*such as is due from an alien or stranger-born, for so long a time as he continues within the king's dominions and protection, and it ceases the instant such stranger transfers himself from this kingdom to another.*"

A greater than Blackstone, (Vattel,) in specifying the duties of aliens, says :

In countries which a foreigner may *enter freely*, the sovereign is supposed to allow access only upon this condition, that *he be subject to the laws—I mean the general laws made to maintain good order, and which have no relation to the title of citizen or subject of the state.*

That is to say, he may not commit a breach of the peace; he may not commit murder, highway robbery, or theft; if he do, he may be punished therefor. But when a question of duty to the state or sovereign is raised by those laws; when, as Blackstone has expressed it, he is required “truth and faith to bear in life and limb and earthly honor;” when an effort may be made to convert him into an involuntary *subject* of the prince in whose jurisdiction he temporarily resides, by compelling him to bear arms, or do any other act which will limit or qualify the allegiance he *owes to his own state*, there the rule of subjection to the laws does not apply, and he may resist their enforcement, or apply to his government for redress, at his option.

Such would also appear to be the opinion in this country. Chancellor Kent lays down the rule as follows :

During the residence of aliens among us they owe a local allegiance, and are equally bound with natives to obey all *general laws* for the maintenance of peace and the preservation of order, and *which do not relate specially to our own citizens.*

As instanced during the recent civil war in this country, aliens were not compellable to bear arms in defence of the government, because such bearing of arms was a duty relating “specially to our own citizens.”

In the same spirit, the act of Congress of 1790 (chap. 36, sec. 1) defines treason thus :

If any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall stand adjudged guilty of treason against the United States, and shall suffer death.

During the recent civil war the punishment of the crime of treason was materially modified by another act of Congress. Nevertheless, many foreigners, aliens, subjects of Great Britain and other states, enlisted in the land, privateer, and blockade-running services of the enemies of the government. We never heard of a charge of treason being made against one such person. On the contrary, immediately upon their arrest the ministers and consuls, with a promptitude which would have been commendable in the officials of like grade belonging to certain other nations, at once demanded their release or speedy trial; and the case of punishment, or even of conviction, was very rare under the vigilance of those officers. What would her Majesty the Queen of Great Britain, or her minister at Washington, or her consul at New York, have said—nay, what would they have *done*—had this government presumed to indict, try, sentence and punish a British subject on the charge of treason, be the facts ever so glaring or the punishment ever so slight? Would not the entire force of that government have been used to dispel any such illusion from the American mind, and to liberate any such captive from an American prison? And yet every enlisted alien, every blockade-running alien, who came within our maritime league owed to the American government that *local allegiance* of which William Blackstone and Chancellor Kent speak; and if there were an equality of duty, and equality of criminality, and an equality of punishment, why were all such persons permitted to leave the country without any punishment? That they were permitted to leave the country, or remain therein at pleasure, is a fact which does not reflect upon the magnanimity, the intelligence, or the confidence of the government, but it goes far to show that this government rationally never intended to hold a foreigner equally guilty of treason with the citizen. Again, during that war, for a citizen to refuse to do military duty (if physically competent) would have been evidence of a treasonable intent, which, united

with the requisite proof, an overt act, would have constituted treason. But if a foreigner refused to do such duty, it would have been deemed improper to have suspected him of treason on that account.

Another reason why an alien cannot be guilty of high treason to the state in which he resides, and cannot be tried, convicted or punished for such crime equally with a native-born subject, is contained in *the allegiance he owes to his own country*. "The citizen or subject who absents himself for a time without any intention to abandon the society of which he is a member, does not lose his privilege by his absence; he preserves his *rights*, and *remains bound by the same obligations*. Being received in a foreign country, in virtue of the natural society, the communication and commerce which nations are obliged to cultivate with each other, he ought to be considered there as a member of his own nation and treated as such. The state which ought to respect the rights of other nations, and in general those of all mankind, *cannot arrogate to herself any power over the person of a foreigner, who though he has entered the country, has not become her subject*." (Vattel, 173.) Since the foreigner still continues to be a citizen of his own country, "and a member of his own nation, he must not arm himself against the parent state, and if *he be recalled by his native government, he must return or incur the pains and penalties of treason*." (2 Kent, 12.) In time of war the state needs the services of all her citizens, and has a right to call upon them, wheresoever they may be, for assistance and support. If her citizen who may be a resident of a foreign country be held by such foreign country to that strict and permanent and perpetual allegiance which is implied either in the death penalty or life imprisonment on a charge of breach of that allegiance, the person so held is placed in a most embarrassing position between the duty he owes and desires to fulfil to his own country, and that enforced from him by the foreign government. Will his state indict him for treason for failing to obey her mandate, or will that state demand his immediate liberation and return to her service? The dignity, nay, the very necessity of the state will compel her to fulfil her duty to herself, and her duty to her citizen, by demanding, and, if need be, enforcing the delivery of her citizen to her protection and to his proper allegiance. For if a state is recreant to this duty, her citizens will become doubtful of her strength, her valor, or her will to protect them. This doubt causes laxity in the industrial and commercial classes from whom she derives her pecuniary strength and political nourishment—her citizens will refuse to yield the allegiance which is only conditioned on protection—they will form combinations, organize rebellions, divide her strength, and leave her the prey of any foreign power which seeks to devour her or which promises better protection.

We may be told, however, that if an alien be guilty of murder, robbery, theft or other crime against the municipal law of the land in which he reside, his government has no right to demand his release, and that the same rule would apply to cases of high treason. The common sense and the conscience of mankind in every nation have always discriminated between the sinfulness or unsinfulness of crime—between the divine view of an act called criminal, and the human, governmental or legislative view—between offences against the state which bear upon their face the evidence of great moral turpitude or badness of heart, and offences which, like treason, are merely of a political character—between offences which God forbids and offences which man creates. This discrimination has always mollified treason. The traitor has ever had followers and sympathizers, who thought as he thought, and among those opposed to him he will ever have a share of that universal pity implanted by God in the human heart. Treason seldom partakes of the sinfulness, the moral turpitude of other crimes, and while its adherents may seek death as martyrdom, there will yet be enemies who could forgive and, if in their power, pardon. There are times, too, when the traitor deserves and secures the praise of all mankind and the undying laudations of all lovers

of heroism. This the murderer, the robber, the thief, never secures. The glory of every government should be to receive the blessings of posterity for its humanity and prudence. Let a government forget humanity and it forfeits its claim to glory. Humanity may demand of a government that attention to man's misery which it is in its power prudentially to bestow, and this view independent of technical constructions of duty. Humanity may refuse her offices to the murderer, the robber, and the thief, because they are her natural enemies; but she cannot refuse them to the so-called traitor, because he may be her natural friend. Hence the government of an alien would appear to have a right to demand the surrender of her subject when not convicted of a crime against the human race, and more especially that *such surrender would at once extinguish the crime and the punishment*. Once a murderer always a murderer—once a robber always a robber—once a thief always a thief—until pardoned by the supreme power of the state; but once an alien, traitor so called, "*his treason ceases*," in the language of Blackstone, "*when he quits the kingdom and goes to another*." Hence his government violates no law of humanity, no rule of the law of nations in demanding his release and in bringing him out of the jurisdiction of the foreign power. In this case of Mr. McCafferty the American government on this ground alone would be fully justified in demanding and enforcing his release.

The distinction between alien and subject has been recognized in England in cases of equal if not greater enormity than that of treason. By the ancient common law, piracy, if committed *by a subject*, was held to be a species of treason, being contrary to his natural allegiance; and *by an alien*, to be felony only. Since the statute of treason 25 Edw. III, ch. 2, it is held to be only felony in a subject. Formerly, it was cognizable only by the admiralty courts, which proceeded by the rules of the civil law; but a statute was passed, 28 Henry VIII, ch. 15, establishing a new jurisdiction for the purpose of trying *subjects* for piracy according to the course of the common law. Aliens may yet be tried for this offence in the admiralty court. By statute 11 and 12 William III, ch. 7, if any natural-born subject commits any act of hostility upon the high seas against others of his Majesty's subjects, under color of a commission from any foreign power, this would be piracy; but committed by an alien is merely an act of war if done under a commission from a foreign state. In like manner, Congress, in the act passed April 30, 1790, ch. 9, has observed the distinction in declaring that "if any citizen should commit any act of hostility against the United States, or any citizen thereof, upon the high seas, under color of a foreign commission, such person should be adjudged a pirate, felon and robber." But this statute could not be applied to aliens accepting commissions to commit acts of hostility against the United States or her citizens.

The very indictment under which Mr. McCafferty was tried seems to admit the necessity of birth and of that natural and perpetual subjection and allegiance of which Blackstone has spoken.

This bill found by the grand jury for high treason contained four counts. The first count sets forth the general charge against the accused as follows:

The jurors for our lady the Queen, upon their oath and affirmation, do say and present, that Thomas Burke, (otherwise called Thomas F. Burke,) John McCafferty, (otherwise called William Jackson,) Edward Duffy, (and others named,) being *subjects of our said lady the Queen, not regarding the duty of their allegiance*, nor having the fear of God in their hearts, but being moved and seduced by the instigation of the devil, *as false traitors against our said lady the Queen, and wholly withdrawing the allegiance, fidelity, and obedience which every true and faithful subject of our said lady the Queen should and of right ought to bear*, did compass, imagine, devise, and intend to depose our said lady the Queen," &c.

Mr. McCafferty is thus alleged to be a subject of the Queen of Great Britain, and in an indictment drawn by some of the best lawyers of her Majesty's government, it is not to be supposed that any unnecessary allegation was inserted;

in fact, that when it was inserted *it was necessary*, in order to lay the first essential foundation for the charge of treason—a practice which any person at all read in the criminal law of Great Britain could not neglect without danger to his cause.

To recapitulate :

Treason cannot be committed by an alien, because,

1. Treason is a breach of allegiance.
2. That perpetual allegiance, the breach of which would justify perpetual punishment, does not exist in this case. The local or temporary allegiance can only be violated by the alien, and such violation ceases to be treason when such alien, either of his own motion or on demand of his own government, quits the realm ; and the punishment of the breach of local allegiance cannot be of longer duration than such allegiance.
3. No nation has a right to claim the perpetual allegiance of an alien within her borders.
4. The punishment of an alien by death or by imprisonment for life is equivalent to a claim of perpetual allegiance, and is in excess of the local allegiance due, and deprives the government of the alien of his allegiance and services.
5. An alien cannot involuntarily be compelled to change his allegiance, and he is entitled to the protection of his government wheresoever he go, and his government may, at any time, demand his personal attendance of the country in whose custody he is.
6. That if such an alien refuse to obey the mandate of his government, he may be impeached as a traitor.
7. If his government fail to demand and insist upon his liberation, if he be willing to obey her orders, such government will be self-destructive.
8. That the law recognizes the distinction between subject and alien in piracy.
9. That the indictment for treason must allege subjection and allegiance.

If, therefore, the accusation of high treason under which Mr. McCafferty was tried and sentenced cannot be sustained by the law of nations, or permitted to be made consistently with the allegiance he bears to this nation, any evidence tending to refute such accusations would be useless. If the crime with which he be charged have been impossible in him, why forward evidence in refutation ?

It may be said that Mr. McCafferty has been convicted of certain overt acts, which, if not treason in an alien, may be acts of war against the government and hostility against the subjects of Great Britain. If such be the case, that government has its remedy expressly provided in the treaty above cited. Article 21 says :

It is likewise agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign prince or state, enemies to the other party ; nor shall the enemies of one of the parties be permitted to unite or endeavor to enlist in the military service any of the subjects or citizens of the other party ; and the laws against all such offences shall be punctually executed. And if the subjects or citizens of the said parties shall accept any foreign commission or letters of marque for arming any vessel to act as a privateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the said party to treat and punish the said subject or citizen bearing such commission or letters of marque as a pirate.

Now if Mr. McCafferty, an American citizen, have done any act of hostility or violence against a subject of Great Britain, or accepted a commission so to act from any foreign prince or state, enemies to Great Britain, or endeavored to enlist in the military service of such enemies any of the subjects of Great Britain, the laws—as the neutrality laws, for instance—may be executed against him by the United States ; or if he have accepted a foreign commission against Great Britain he may be treated and punished as a pirate ; that is to say, as such piracy has been limited and defined by the lords and commons of Eng-

land during the recent civil war in this country, as such piracy was limited and defined by her present prime minister, the Earl of Derby, in the House of Lords, on the 16th day of May, 1861, when he said, on the subject of privateering, (also denominated piracy by this treaty,) "*They [the United States] must not strain the law so as to visit with the penalty of death, as for piracy, persons entitled to her Majesty's protection.*" A limit and a definition concurred in by Lord Chelingsford, by Lord Brongham, by the Lord Chancellor, by Lord Kingsdown, and by many others of the present cabinet of her Majesty, the Queen of Great Britain. I am not to be understood for a moment as admitting the commission of one such act by Mr. McCafferty. I merely intend to show that if they have unquestionable proof of such act they have an unquestionable remedy under the treaty; whereas the remedy under charge of treason is extremely questionable. Such a remedy can be pursued by Great Britain without infringing on the right of the United States to the allegiance of her citizen, because it is so expressed in the treaty; but a prosecution, conviction, and punishment for treason cannot be pursued by Great Britain without infringing the right of the United States to the allegiance and services of her citizen, because neither the law of nations, our treaties with Great Britain, her own municipal law, nor our municipal laws have authorized the surrender of this indispensable right, a surrender which will be implied if the British government be permitted by the United States to hold Mr. McCafferty without proper protest.

I fear, sir, that I have nearly exhausted your patience in this somewhat lengthy communication, but I hope that the words I have used express clearly the idea which actuates it—an idea which is founded on a high national and American sentiment, to which, in your heart, if I may say so, you are no stranger.

I beg leave to subscribe myself,

Very respectfully, your obedient servant,

JAMES J. ROGERS,
Attorney, &c.

HON. WILLIAM H. SEWARD,
Secretary of State of the United States.

Mr. Smith to Mr. Seward.

[Extract.]

CINCINNATI, June 1, 1867.

SIR: Yours of the 22d ultimo just received. You ask me for the particulars in relation to my brother, James Smith, who is in Kilmaniham jail, Dublin, Ireland, for high treason, for carrying a revolver in his pocket. He was sent there this last time on the 6th of March, 1867.

In your letter to me you state that he was compelled to leave the country when released by this government. Such is not the fact. My brother was arrested one year ago for complicity with Fenianism. When he was in jail one week the British government offered to release him if he would leave the country, that is, Ireland. He then told them that he would not leave, as he had committed no overt act, and he thought, as an American-born citizen, he had no right to leave until he heard from his government.

You at that time demanded his release of the British government, but it was without any such condition, for he would not receive them in that way. He is in Ireland on business connected with a will of his uncle. If an American has no rights in Ireland the sooner we know it the better, for then we can keep away from them.

I would rather see my brother hung than to see him truckle or toady to that government, when he has not violated any of their laws.

* * * * *

Yours, very respectfully,

BARTHOLOMEW SMITH.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. F. W. Seward to Mr. Smith.

DEPARTMENT OF STATE,

Washington, June 3, 1867.

SIR: I have to acknowledge the receipt of your letters of April 23 and May 7, in relation to the imprisonment of your brother in Ireland. Our consul at Dublin exerts himself assiduously in behalf of all American citizens in confinement on charge of complicity with the recent insurrectionary movements in that country. It is impossible, however, for this government to control in any way the criminal administration of the Irish courts, and your brother's letter, enclosed by you, does not suggest any method which can assist in demonstrating his innocence.

Your obedient servant,

F. W. SEWARD,

Assistant Secretary.

BART. SMITH, Esq.,

396 Court Street, Cincinnati, Ohio.

Mr. O'Reilly to Mr. Seward.

DETROIT, *June 16, 1867.*

HONORED SIR: Enclosed, as per instructions, I transmit you the within resolutions, for the purpose set forth therein. I need hardly tender you my personal thanks for your action in the premises, but the contrast with the action of the British government is striking in the case of Luby, Odlonovan, Rossa, Kickham, Ketcham, Denis Downing, Mulcalug, *et al.*—a combination of literary celebrities and writers of the first water, and, of course, gentlemen of exquisite sensibilities, suffering, with true nobility of soul, the most loathing tortures in body and demoniac mental persecution, their heroic patriotism so far alone preventing aberration of mind and destruction of the intellectual faculties; and all this in view of the opinion of the two greatest lawyers in England, as well as the eminent Butt and others in Ireland, "that the whole proceedings must be set aside in the Lords or Error," and yet refuse, for the paltry sum of £62 costs, to let the cause be removed until costs are paid, so that their merciless and unjust inflictions may continue a little while longer, even though the proceedings be all virtually illegal. But above and beyond all this, when time permits I shall put before the nations of the earth solid grounds, founded on international law beyond question, as well as of international commercial relations and necessities, as just and proper, demand on all civilized powers to intervene, not merely morally, but physically, by uniting their arms to enforce their clearly ascertained demands and rights, completely ignored for years, in defiance of the international code.

But pardon my hurry and the intrusion on your valuable time, and permit me to subscribe myself, with sentiments of grateful consideration, your obedient servant,

MILES J. O'REILLY.

P. S.—The resolutions, with accompanying explanations, will appear in the New York "Irish People" of the week after this ensuing, to which I would respectfully call your attention.

M. J. O'REILLY.

Hon. WILLIAM H. SEWARD,

Secretary of State.

At a meeting of the Detroit circle of the Fenian Brotherhood, held at their hall in Detroit, June 13, A. D. 1867, the following preamble and resolutions were unanimously adopted :

Whereas Captain John McCafferty, a member of our circle, was arrested, indicted, arraigned, and convicted of and on a charge of high treason preferred against him at a court held in the city of Dublin, Ireland; and whereas on the trial of said cause it appeared certain parties holding high positions, duly subpoenaed on his behalf, went to England, out of the jurisdiction of said court, and that certain documentary evidence called for and relied on touching the defence was admitted by the witness under oath to have been by him sent to England expressly to avoid its production; and whereas the attorney general prosecuting for the Crown declined producing certain witnesses whose names were indorsed on the indictment and whose testimony was anticipated by the defence to have been produced for and on behalf of the government, thereby causing the eminent counsel for the prisoner so misled to exclaim, "It was murder, foul deliberate murder," if the government doubted the evidence of their own witnesses and failed or refused to produce them on the witness stand: and whereas a writ of error, it appears, at the suggestion of the same eminent barrister, was sued out in said McCafferty's behalf, at the instance and expense of the United States of America, of which he is a natural-born citizen; and whereas the prompt action therein taken by the Executive of this nation, by and with the advice of the cabinet ministers thereof, evidences the keen and vigilant scrutiny yet wise and prudent solicitude and care exhibited by our government in penetrating the motives and apprehending the action of the chief officer of the Crown in the conduct of said prosecution, so immediately pierced and aptly illustrated by the very able counsel conducting the defence; and whereas, in view of certain errors of his youth, the prompt, generous, and truly magnanimous action of the executive and his ministers, became thereby doubly enhanced and hallowed in the memory of his late companions, by superinducing the constant remembrance of a beautiful and touching reminiscence, to wit: that the poor condemned but noble captive, fettered in chains and seemingly friendless in a foreign land, was, from the instant he received his pardon from the best government under Heaven, (against which in an hour of folly he unwisely rebelled,) an object of its deep solicitude and anxious care; and whereas he was solemnly pledged by his initiatory vow in our society to violate no law of the United States or treaties made in pursuance thereof with foreign powers touching the attainment of the end in view—Ireland a nation—a pledge strictly enforced by all our members;

Now therefore, in view of the above premises and the deep lasting obligation resting on us, his brothers, companions, and friends in the first instance; be it

Resolved, That we, the members of the Detroit circle of the Fenian Brotherhood, would be recreant to the first principles of our pledge, and forgetful of our dignity as American citizens if we did not, and we do hereby tender to the President of the United States of America and his cabinet ministers our sincere and heartfelt thanks for so promptly vindicating, under such magnanimous circumstances, a cardinal principle—that the guerdon panoply and shield of American citizenship accompanies and will protect its representative, although a captive in chains, in every land and clime, and will not desert him even in the tribunals of justice until it becomes manifest and clear by positive proof that he become justly amenable to the laws of the country accusing him with having violated them; and be it further

Resolved, That in this one single instance and act of magnanimity more has been accomplished to evidence to the world the indivisible bond of true fraternity binding the American people indissolubly in the links of a common brotherhood, knowing no north, no south, no east, no west, than any one act done since the consummation of the suppression of the greatest and most causeless rebellion known to history, rebuking the low, mean, cunning slanderer, and the arrogant, vain, selfish, vindictive, and malignant calumniator of our practical principles, while it must command the admiration of mankind for the pristine grandeur and beautiful simplicity of our glorious institutions.

Resolved, That the foregoing preamble and resolutions, neatly engrossed and duly attested under the seal of the society, be transmitted to the Secretary of State for the United States of America, to be laid before the President and cabinet ministers in council assembled, as a

partial expression and deep acknowledgment to and respect for them for their action in this matter: and for such action, so by them done, we can truly say, in the language of the inspired record, "Well done good and faithful servants." You have done all we could desire. Asked nothing that was not just; submitted to nothing that was wrong.

MILES J. O'REILLY,

Centre of the Detroit Circle of the Fenian Brotherhood.

Attest:

DENNIS P. MCCARTHY,

Secretary.

Mr. Crosby to Mr. Seward.

NORWICH, CONN., July 12, 1867.

SIR: I respectfully call your attention to the case of Lieutenant Joseph H. Lawler, of this town, who is now confined in prison in Ireland by the British government for alleged complicity with the Fenians.

Lientenant Lawler served during our recent war, having been mustered into the 9th regiment Connecticut volunteers as a private on the 30th of October, 1861. On the 26th of January, 1863, he was promoted to a lieutenant in his regiment for good conduct, and he continued in the United States service until 1866, when he was honorably discharged. He is now twenty-three years of age.

His mother and relatives live in this town, and they believe that no evidence can be shown implicating him with the Fenian outbreak in Ireland. It seems that a few months ago he was ordered home from Ireland by the British government, and in compliance with that order he returned to the United States; but having occasion to return to Ireland shortly after, he was arrested simply because he had so returned, and on suspicion merely, and his present inability to procure his liberty seems to be more on account of the suspension of the writ of *habeas corpus* in Ireland, than on account of any evidence of his participation in Fenian movements.

Hoping that our government will take the necessary steps to procure the release of Lieutenant Lawler, and his safe return to the United States,

I am, very respectfully, your obedient servant,

HIRAM B. CROSBY.

HON. WILLIAM H. SEWARD,

Secretary of State.

Mr. Warren to President Johnson.

KILMAINHAM PRISON,

Dublin, Ireland, August 2, 1867.

DEAR SIR: I respectfully call your excellency's attention to my case. By birth an Irishman, by adoption an American citizen; here as a member of the press collecting notes for the American press, coupled with a desire to revisit the old scenes of my boyhood, and see near and dear relatives, I was arrested on the first of June, and have been since closely confined. No charge has been advanced against me—I have violated no law. I have demanded my release, or immediate trial, and now, as an American citizen and freeman, ask your excellency's interposition in my behalf to obtain a right (my freedom) which England has no power to take, and which claims your excellency's protection. My friends will lay my case more fully before your excellency.

I am your excellency's faithful friend,

JOHN WARREN.

His Excellency ANDREW JOHNSON,

President United States, &c.

The President to Mr. Seward.

[Executive.]

AUGUST 17, 1867.

Case of Warren, John, confined at Dublin, Ireland, on suspicion of Fenianism.
Demands his release as an American citizen.

Respectfully referred to the honorable the Secretary of State.

By order of the President :

R. MORROW, *Secretary.*

*Mr. Wood to the President.*NEW YORK, *August 16, 1867.*

DEAR SIR: I have just received a letter from Colonel John Warren, late of the federal army, and a citizen of the United States, dated August 2d, and written from the jail in Dublin, where he is confined a prisoner without specific charges, and, as he believes, without just grounds. This is but one of many cases where American citizens of Irish birth, and some of American birth, are detained by the British government under some pretext or other. It is a common thing in Ireland for the emissaries of this tyrannical power to arrest and incarcerate in dungeons your own countrymen for no other reason than that they are your countrymen. The fact that the person is an American appears to be sufficient justification for the perpetration of these wrongs. This is a national insult which our government is not at liberty to overlook. Every citizen, whether native or adopted, is entitled to protection, and in the present case the obligation rests upon us with more than ordinary force.

The reasons which render our Irish adopted citizens so obnoxious in English eyes are because, as a class, they are so entirely and purely American in their views of republican liberty and opposition to despotism. They hate England because England oppresses their native land, and the faith of their fathers. They would be unworthy of their own history, and degenerate Americans, if they could feel otherwise under the circumstances.

I therefore, Mr. President, respectfully but earnestly ask your immediate attention to this subject. I know that other duties are pressing, but still the urgency of these cases, the national honor involved, and the duty we owe to a large patriotic and valuable class of our fellow-citizens requires prompt action. The people have confidence in your devotion to the interest of all without distinction of nativity or caste, and hope that you will turn aside for a moment from the cares of other public questions to give this immediate thought and official action.

Very respectfully, your obedient servant,

FERNANDO WOOD.

ANDREW JOHNSON,

President of the United States.

Mr. Liebenau to the President.

NO. 4 HAMILTON PLACE, WEST 51ST STREET,

New York, August 21, 1867.

MR. PRESIDENT: I have the honor, in behalf of the *Constitutional Union Association*, to present for your consideration the accompanying petition in

favor of *government intervention* for the immediate release of Colonel William J. Nagle and Colonel J. Warren, both natives of the United States, and now incarcerated in Kilmainham prison, Dublin, Ireland.

These gentlemen having committed *no* overt act, and being *natives*, very naturally look to *their government* for that protection which has been successfully exercised in behalf of adopted citizens, and which governments are instituted to secure.

They have both faithfully contributed to the preservation of our Union during its hour of peril, by *active loyalty in the field*. Colonel Nagle, with his *four* brothers, entered the Union service at the opening of the war, and at its close *two* only returned to their decimated home. Three of them out of the five nobly offered up their lives on the altar of our blessed Union.

It will not be, it should not be, that the government of their *native land* will neglect to intercede, when they have, with bravery and devotion to the Union, shown themselves so worthy of government intervention.

Permit me to call your excellency's attention to the strength of the accompanying memorial, as it combines the collective talents of this Empire State, congregated now at Albany, in the periodical convention for revising and correcting its constitution.

You will find it worthy of examination, as well for the singular admixture of opposing political elements, as for the many of your political and, I believe, personal friends, (many of them members of the late Philadelphia Convention,) it embraces, exhibiting the most positive evidence of the patriotic spirit of resistance to foreign oppression which pervades our State, and the universal determination among our people *to protect the rights of our citizens abroad*.

Permit me most respectfully to urge an early and energetic intervention upon our minister at the court of St. James.

I have the honor to be, with distinguished consideration, your excellency's sincere friend and servant,

HENRY LIEBENAU,

Corresponding Secretary Constitutional Union Association.

His Excellency ANDREW JOHNSON,

Executive Mansion, Washington, D. C.

AMERICAN PROTECTION ABROAD.—AMERICA AND IRELAND.

ALBANY, *August, 1867.*

At a meeting of the Constitutional Union Association, held on Monday evening, July 15, 1867, to effect the release of Americans unjustly imprisoned abroad, the following resolution among others presented by Henry Liebenau was unanimously adopted:

Resolved, That a petition be prepared and circulated under the patronage of our organization for the signatures of the fellow-citizens in behalf of the immediate liberation of Colonel Nagle and Colonel Warren.

DANIEL B. NORTHRUP,

President.

HENRY S. BANKER,

HENRY LIEBENAU,

Secretaries.

To ANDREW JOHNSON, *President of the United States:*

The undersigned citizens of the State of New York respectfully represent that Colonel William J. Nagle, a native of this State, and Colonel J. Warren, a native of Massachusetts, good and loyal citizens of our republic and gallant soldiers of the Union army during our late rebellion, are most inhumanly and unjustifiably imprisoned in Kilmainham prison at Dublin, Ireland; that they were arrested while on a visit to their relatives, without the slightest overt act on their part to justify or palliate such cruelty and oppression, and in gross viola-

tion of all international laws and comity of nations. We therefore respectfully, yet urgently, ask the immediate interposition of our government for their speedy release.

P. S.—When signed, please forward to Daniel B. Northrup, No. 140 Water Street; to O. Sloan Holden, No. 645 Seventh avenue, or to William W. Lyons, No. 150 Lewis street.

Signatures of the members of the New York State Constitutional Convention :

WILLIAM A. WHEELER,
President of Constitutional Convention.
CHARLES P. DALLY,
Judge Court Common Pleas.
WILLIAM M. EVARTS,
Ex-District Attorney.
GEORGE OPDYKE,
Ex Mayor City New York.
IRA HARRIS,
Late United States Senator.
HORACE GREELEY,
Ex-Member of Congress.
GIDEON J. TUCKER,
Ex-Secretary State and Surrogate.
HENRY D. BARTO,
Judge Supreme Court.
FRANCIS KERNAN,
Ex-Member of Congress.
AMASA J. PARKER,
Ex-Attorney General of State.
THOMAS G. ALVORD,
Lieutenant Governor of State.
AUGUSTUS SCHELL,
Ex-Collector of Port.
MAGNUS GROSS,
Editor Stadt Zeitung.
JOHN E. BURRILL,
ARTHUR B. TAPPAN, and thirty-eight others.

Mr. Seward to Mr. Wood.

DEPARTMENT OF STATE,
Washington, August 22, 1867.

SIR : The letter which you addressed to the President on the 16th of August, relating to the case of Colonel John Warren, late of the United States army, who has been arrested, together with William J. Nagle, and with him detained in Dublin, under the suspension of the habeas corpus act, has been referred to this department. The subject has already received the attention of this department, which understands that these persons are citizens of the United States, and that there are no sufficient grounds to charge them with the commission of any offence against the laws of Great Britain, and has good reason to believe that they have already been, or will without further delay be, discharged.

I have the honor to be, sir, your obedient servant,

WILLIAM H. SEWARD.

Hon. FERNANDO WOOD, *New York.*

Mr. Hasson to Mr. Seward.

1445 SOUTH EIGHTH STREET,
Philadelphia, September 6, 1866.

SIR : I respectfully take the liberty of stating that I have just returned to this country after having been confined in the Belfast jail for nearly the past

six months, under the "habeas corpus suspension act" of Great Britain. I was arrested in Belfast, in Ireland, on the 20th of last February, searched by common policemen, and committed to the county jail without any investigation, or even told what I had been arrested for. My protesting against such treatment, on the strength of my United States citizenship, was unheeded, if not literally sneered at. My certificates of citizenship were flung back to me, after they ascertained what they were, as things worthless. I demanded permission to correspond with the United States consul, which was also unheeded for three days, when I was told that I could hold no communication with *any one* but my immediate friends, and then only on the most private business. This, to me, was almost virtually entire separation from the world, as I had no friends there but a single female acquaintance.

When I arrived in that country nearly six months previous, I called upon the United States consul, (Dr. John Young,) who recognized my citizenship, and assured me of protection so long as I pursued my business, recreation, or pleasure legitimately. My being refused permission after my arrest of drawing his attention to my case, I suppose he presumed that I acquiesced in the legality of the transaction, and, therefore, did not interfere. My being denied holding communication with the consul, which I had innocently supposed United States citizenship conferred as a right, destroyed the only prospect I had of claiming the protection of my government, and left me subject to the supercilious sneers of my jailors for assuming such pretensions for United States citizenship. Indeed, they considered me still a British subject, as, in the order for my discharge, his "excellency" spoke of me as of Londonderry—my native county—and not of the United States.

During my imprisonment I was treated in every respect like the convicted criminals, except that I was permitted to supply myself with books and writing materials. As a *United States citizen* I was repeatedly subjected to humiliations that I dared not resent but at the risk of extra punishment.

Visitors, favorites of his "lordship," or his "worship," were constantly admitted to gratify their curiosity in having a look at the "Fenian prisoners." A jail official would usually accompany them, and on passing any one that had been in America, he would sneeringly remark, "That is general so and so, or major so and so," &c., referring to the positions he supposed them to have held in the volunteer service here during the late rebellion. To dare even replying to such taunts as these invariably subjected us for a number of hours to a loathsome hole they mildly termed the "dark cells," or bread and water for so many days, or both.

A few days before the fourth of July, I was writing to my female friend, and jocosely asked her to drink a health for me on that day to the star-spangled banner, and that "long may it wave." For this latter expression I was brought before the governor of the jail, reprimanded, and threatened with extra punishment should the like occur again.

Now the object of this communication is to know what redress, if any, I am entitled to for such treatment. If I have no redress—if citizenship is utterly valueless beyond the limits of our country—a knowledge of the fact, however disagreeable, will be far preferable to being placed in a false position and having to suffer the humiliations that follow the assumption of rights and dignity that are neither accorded nor acknowledged.

I remain your obedient servant,

PATRICK HASSON.

HON. W. H. SEWARD.

Mr. Liebenau to Mr. Seward.

NO. 4 HAMILTON PLACE, WEST 51ST STREET,
New York, September 8, 1867.

SIR: On or about the 12th ultimo I forwarded to the President a petition in favor of national intervention for the release of Colonels Nagle and Warren, signed by the members of our present State constitutional convention, now in session at Albany, which I presume was at once transmitted from the Executive to your department. Will you be kind enough to inform me what disposition has been made of it?

I received yours of August 7th, in answer to a previous note of mine enclosing to you the petition and signatures of the "Constitutional Union Association" on the same subject, in which you communicate the very pleasing intelligence that "Colonel Nagle's case had already been made the subject of a proper instruction to Mr. Adams, and a copy of your communication has been forwarded to him *with renewed instructions*."

Subsequent to which, and several days after the forwarding of the petition of the State convention, an announcement appeared in the Times and Tribune newspapers of this city, purporting to be the substance of a telegram from Washington, stating that the subject of the "release of Nagle and Warren had been brought up before the cabinet" for its action, and also that "the British minister had telegraphed to England on the subject, and the release of the parties in question had no doubt been effected by this time." Will you be kind enough to inform me if that is really so? Has the matter been laid before the cabinet for their consideration and action? and if so, by whose influence was it done? Also, if the British minister did telegraph for their liberation, to whom are we indebted for so active and energetic an effort?

Our Constitutional Union Association being the first to move for the liberation of these men, and acting from the purest patriotic motives, with no other desire than to secure for native citizens the same protection abroad that has been extended to adopted citizens, and anxious only for the speedy release of our fellow-countrymen, we sought not to make it a source of party political advantage, although we are not ignorant of the great hold upon the popular heart of our Irish fellow-citizens any efforts in behalf of these gentlemen would obtain.

We designed to turn that advantage, whatever it might be, in favor of those of our government officials through whose prompt and resolute action the relief of our friends should be effected.

If not inconsistent with the usages and practices of cabinet transactions, please send me the desired information at your earliest convenience, and believe me, most truly and sincerely, your friend, and obedient servant,

HENRY LIEBENAU,

Corresponding Secretary C. U. A.

HON. WILLIAM H. SEWARD,
Secretary of State United States of America.

Mr. Seward to Mr. Liebenau.

DEPARTMENT OF STATE,
Washington, September 12, 1867.

SIR: The President directs me to acknowledge the receipt of your letters of the respective dates, the 21st ultimo and 3d instant, transmitting numerous and respectfully signed petitions on behalf of Colonel William J. Nagle and Colonel J. Warren, who are held in custody in Ireland upon charges of com-

plicity in organizations hostile to Great Britain. The President requests me to inform you in reply that this department has been making strenuous efforts on behalf of Colonels Nagle and Warren, which will be continued. It is important, in the cases of naturalized citizens, that positive documentary proof should be furnished of the fact of naturalization; and some embarrassment has been experienced in Colonel Warren's case, from discrepancies of statement on this subject. In your letter of the 23d of July last you state that he is a *native* of Boston, while in his own memorial to the Irish authorities he avers that he is a native of Ireland, but that he has been naturalized. You will appreciate the importance of a correction of this discrepancy, and of procuring for the use of Mr. Adams the proof of naturalization. Your letter of the 5th instant, addressed to myself, has been received, to which the above may be considered as a reply.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HENRY LIEBENAU, Esq.,

*Corresponding Secretary of the Constitutional Union Association,
No. 4 Hamilton Place, West 51st street, New York City.*

Mr. Nagle to Mr. Seward.

284 PACIFIC STREET, BROOKLYN,

September 23, 1867.

SIR: I have forwarded to your department, through Mr. Henry Liebenau, of New York, duly authenticated affidavits relative to the birthplace of my son, Colonel William J. Nagle, now cruelly, illegally, and unjustly confined in a felon's prison—Kilmainham jail, Dublin, Ireland—without the slightest overt act on his part to justify or palliate such cruelty and oppression.

You are well aware that Colonel Nagle, with his four brothers, native-born American citizens, joined the Union army, and gallantly fought on many battlefields to strike down rebellion. Two of his brothers now fill soldiers' graves. Such brave soldiers as Colonel Nagle are surely entitled to the protection of their government.

I again respectfully beseech the government my son so faithfully served to demand at once his release of the British government, and restore him to the proud position of a native-born American citizen, whose law and institutions he *never* tarnished or violated.

Yours, truly,

D. M. NAGLE.

Hon. WILLIAM H. SEWARD,

Secretary of State.

Mr. Devitt to the President.

CINCINNATI, OHIO, *September 23, 1867.*

DEAR SIR: I am compelled to take the liberty of addressing you on this important subject: that there are in lonesome prisons at this time, in England and Ireland, some of our noblest citizens, for language spoken in the United States. Five thousand of the citizens of Hamilton county call on your excellency to use your influence to have these gentlemen liberated, (Colonel Meany, Colonel

Nagle, and Colonel John Warren.) You will confer a lasting favor on the Irish-American citizens by complying with the above request.

DR. P. M. DEVITT,
Cincinnati, Ohio.

ANDREW JOHNSON,
President of the United States.

[From the Dublin Nation, August 24.]

A VOICE FROM KILMAINHAM.

LETTERS FROM COLONEL JOHN WARREN.

The following important and able document having reached our hands, we lose no time in laying it before the public, whose attention it fully merits. The principle involved in the case of Colonel Warren is one that the American government is bound to look to, if it does not mean to forfeit its duties towards its adopted citizens and lower its character in the eyes of the world :

KILMAINHAM PRISON, DUBLIN, IRELAND, *August, 1867.*

To the Irishmen in the United States :

Fellow-countrymen : In calling your attention to my case, I do it not on personal grounds. My case is your case. Business or pleasure may any day bring you here, and it is well you should know positively if you are still subjects of her Britannic Majesty, amenable to her laws, or if citizens of the United States and entitled to her full protection. While in my adopted country my highest ambition was to obey and protect her laws : never dreaming, nor, in fact, acknowledging, that it was obligatory on me to regard or respect any English law, whose allegiance I indignantly renounced at my first opportunity. Was there an effort for freedom the world over—a spark, a gleam—every American freeman sympathized with it ; and when the infant Cretan rose against the powerful Turk, America, true to her republican doctrines and right of self-government, was the first to sympathize : and when lately the accumulated wrongs of poor Ireland tortured her into a premature outbreak, the Catos and Ciceros of the American House of Representatives nobly avowed their appreciation of the gallant movement. Under such an influence, such an inspiration, how can the Irishman, whose political ideas are moulded in America, independently of his love of native country, do otherwise than sympathize with Ireland. And I do hold it is the duty of America to immediately protect any citizen whose liberty is assailed for giving expression to opinions in America favorable to the spread of republicanism and self-government. From the forum, press, and council chamber come forth the spirit of freedom : we imbibe it—it is contagious. The American Constitution is the teacher, the minister : we are only a portion of the congregation. If our opinions and aspirations in favor of freedom are wrong, the teacher is wrong : If we are to be imprisoned without appeal for expressing and promulgating these teachings, why, the teachers should be locked up in Fortress Monroe to prevent the spread of a heresy and a pernicious doctrine : all provided that no foreign law is violated. This, my fellow-countrymen, is my position. 'Tis true I sympathize with all who aspire to self-government. It is also true that I have violated no English law ; and it is doubly true that if circumstances could prove that I conspired against British dominion on British soil, or were I found in arms fighting for freedom, no word of mine would be used to save me from the gibbet. But here, prompted by the dictates of a God-inspired love of my old home, to revisit old and dear scenes—full of hope, ambitions, confiding—proud to meet my old companions as a modern Roman, a freeman, an *American* citizen—I heared these old loved scenes and companions and relations, when, without any cause, I am arrested, cast into a dungeon, and for more than two months am treated as an ordinary prisoner, reduced to the equal of the murderer and robber, in solitude and silence. Unaccountable are the ways of the Lord, and great is the fall and blighted the hopes, from the proud position of the modern Roman, and love's heartfelt hope of an immediate meeting with the old friends, to the position of an ironed felon and a dungeon ; but conscious of never having willingly injured any one, in peace with my God, I will bear it as it becomes an Irishman and a Christian. I have said my case was yours. In proof, on your arrival here, you may be supplied with a passport and consider yourself perfectly safe. But be careful ; you may have bought an Irish bond, or in your exuberance and excitement of the moment you may have thrown up your hat at a meeting where some head centre was belaboring John Bull ; or you may have looked at No. 19 Chatham street, or 706 Broadway as you went by. This is quite possible. Well, you arrive ; you wear a good coat and a villainous moustache, and you have acquired a habit of standing erect, dashing ahead, swinging your hand, and, you republican barbarian, if you meet a lord you don't take your hat off : you look him right in the face : you don't get nervous : in fact

you care as little about him as about a common man. You wear the murdering square-toes, (the man who introduced that fashion is bagged more Americans than Corydon ever will;) all go to prove that your education is dangerous; that you don't worship monarchy; that you are a republican, a freeman. You're pounced upon: you get indignant. What right have the mercenaries of England to interfere with you, an American citizen? But now you have spoiled it. If you had kept your mouth shut you might have had some chance. A little of the brogue is left; you are an Irishman; your goose is cooked. Well, you wax warm; you shake Andy Johnson at them; you tell them you will have him send to Connecticut, the land of wooden hams and nutmegs, and get a big wooden spoon made and come over here and spoon the G—d d—n kingdom into the Atlantic. Bluster away, old fellow, 'tis no use. On go the darbies; and such a sight! Why, tear-an-ouns, your mother would not know you now, man. For there are soldiers and policemen, and lanciers, and governors, and deputies, and detectives, and Crown prosecutors, and turnkeys. Such a sight! It beats Finnigan's ball out a-d out. Forward! On you go *en route* for Dublin: and the only bright spots in the whole scene are the maledictions cast by the old women on the peelers as you go along, with an occasional old shoe or a stone thrown at their heads, and the prayers of the said old women for you. You get to Dublin: the darbies are taken off; you are in your cell; God's light just peeps in through a small heavily-grated window. Place your back to the wall, and if you feel like hitting out, *a la Heenan*, you can strike the wall at the other side. Sit down and meditate. Are you not in a tight place, Mr. Jonathan? There you are, though. You can apply to the United States consul. You have your passport: he will attend to your case. If you did have this, you have to wait till the next mail was going to America; write for your naturalization papers. Write to this dignitary. He comes when he gets ready, and calls at the castle in your case when it is convenient. But wake from your reverie, 'tis nine, a. m. There is a noise at your door. A little door is pushed one side, when for consolation a gruff voice summons you to appear and pick up, Mr. Republican, your breakfast—a dipper or stirabout. But never mind this; there are hundreds of good men in Ireland who are not sure of this same. Now, sit down and eat. Don't you feel lonesome for your cock-tail? Ten o'clock: The bell rings: stand in your door, and fall in four paces from each other, with the crowd, who are to be *exercised* in the bull-ring. The bull-ring is a closely confined yard: and the only difference between exercising or ox-driving and the exercise or American citizen driving is, that the ox is a quadruped or four-footed animal, and is driven at the point of a stick, while you are a biped, or two-footed animal, and are driven at the point of the bayonet, and with loaded revolvers in the hands of soldiers and prison officials. Walk on, old fellow; keep bobbing around. You must not stop to speak or look at any one for two mortal hours. Twelve o'clock: You are relieved in the bull-ring, and return to your cell. Here you amuse yourself, which can be profitably and concisely done (the prospect and scenery are all within 8 feet by 10 feet) till three o'clock, when your small door is again opened, and your dinner, a junk of bread and a can of milk, is pushed in to you. Your memory immediately ruminates, and you think of Delmonico, Leggett, Crook, and in your magnanimity you even think of the coffee-and-cake man. Keep up your spirits. Four o'clock: Your door is again opened, and a powerful gas-light is lit, which burns, by the doctor's orders, all night for the good of your eyes, and if the nimble-hopping enemy attack you, to get at him with your eyes open. Five o'clock: You stand at your door again, to be inspected by the governor and some of the officers of the garrison; after which you are shut up for the night. This is a good time to meditate. Just think of your coming home from business and meeting a happy family. Think of your hot flap-jacks, your dough-nuts and chops. Oh, don't—'tis murder! But think of vengeance, retribution!—your God! Such, my countrymen, is the position into which any American is liable to be thrown if he visits England, Ireland, or Scotland. There is nothing to prevent his arrest: nothing to prevent a Massey or a Corydon to swear he saw him at a public meeting in America: saw an Irish bond hanging up behind his counter, or saw a name to correspond with his published through the press as having spoken or written in favor of republicanism.

In some cases proof may be easily obtained, and the parties released. In others it may take a month, two, or three; but the very idea of the myrmidons of England being permitted for one moment to touch an American citizen and imprison him for presumed acts done in America, should rouse the indignation of every American citizen, and demand that England should be made immediately and significantly to understand that no American citizen is amenable to her laws for acts committed within the jurisdiction of the United States. If England pointedly understood this, she would never attempt to persecute American citizens as she does. Why, it is only a few days ago since an American from Nashville, Tennessee, a man who actually did not know General O'Neill, who lives there, was arrested in London and confined in Kilmainham for a month, subjected to the treatment above described, because he looked like Colonel W. R. Roberts. If England were to know this she would not hold me an hour in custody. It is possible I may be released by the interposition of my government in some time; but where is my redress for my sufferings and probably loss of health, and the loss and suffering of my family by my being unable to provide for them, and, greater still, for the indignity, the insult, the national wrong, the defiance offered to our common country every day by the arrest of her citizens, both native and adopted?

Your bed, Mr. Republican, is democratic enough; it is a piece of canvas nailed on to two

flat pieces of board, just big enough to get into. The covering has done its turn well, and has, in its day, enveloped the murderer, the robber, and the pickpocket, without being sufficiently abused with soap to change its plumage. Sleep, sleep. But you are uneasy. You kick at imaginary something; you again think of home, mother, wife, and children. But compose yourself; you have one inseparable luxury which the miscreant informer cannot take from you, and which he, wretch, never will possess—a clean conscience. Sleep, sleep, and dream of home. Five o'clock: The bell rings—get up. The Scriptural phrase, "Take up thy bed and walk," won't apply, "but make up your bed and sling" it up to the wall. The next order is, "Take arms," shoulder, and present yourself at your door, chamber ornament in hand; next, "march" by the closet to the wash-room, where stalls are built for the American animals; but, by a recent magnanimous act of Parliament, they have dispensed with putting the halters on. Wash—driven, as a matter of course; don't look or speak to any of the other animals; return to your cell—and thus ends one day and begins another in Kilmainham.

Let us see what the United States consul is doing in the mean time. 'Tis three o'clock; he is after his dinner, and feels well. He walks forth as proud as a peacock. He knows he is admired; the people love him because he is the representative of freedom. He walks to the castle; even here he must be respected. In the course of conversation with some of the officials on the result of a game of billiards they had the night before, it incidentally occurs to him he may as well inquire into your case. "What progress?" he inquires. He is told those congenial assistants of the Crown, Messrs. Massey and Corydon, are at present engaged in another part of the country, in pursuit of their profession, and would not be able to come to Dublin for some weeks yet. He calls again and again, gets no satisfaction, and, after months, refers the case to the minister in London. Let us look in there, and see what are the prospects. There is Mr. Adams himself, as stiff and starch as a lord; he is sitting at his desk, and in turning a lot of papers yours (you're lucky) fortunately turns up. He reads; turns to a clerk and instructs him to write to the castle in Dublin for a copy of documents and papers connected with your arrest. He receives an answer that they will be furnished at the earliest opportunity. He is satisfied. Diplomacy! And thus it is, Mr. Republican, between the diplomacy and the red-tapeism, and the toadyism and the flunkeyism, the *habeas corpus* suspension act may have expired, and you crawl into existence again, broken down in health, business ruined, with a cauldron of vengeance burning in your breast, and no increased love for your own government.

I repeat again, my countrymen, that my application to you is not personal. It is general, and seeks the removal of and redress for a general insult. You have entered into a sacred compact with the American government. You have renounced all former allegiance, and have sworn to obey and protect her laws. By your industry, by your manual labor, by your intellect, by your capital, by your devotion, by your blood on the battle-field, you have, in proportion to your number, done more than any other class of citizens to raise your adopted country to the proud position which she holds to-day. You are a producing class. You are the material from which, in case of internal or foreign war, the fighting element is to come. You, in case of a draft, seek not money exemption; you prefer to take your position in the field. You are the faithful sentinels on the outpost, guarding, with a jealous, with a vengeful eye, the sacred approaches to republicanism and freedom from the insidious sallies of Englishism and monarchy. While you have done and are doing all this, you are neglecting a sacred duty to yourself, to your children, to posterity, to the aspirations of freedom, and to generations yet unborn, by, without remonstrating, permitting England with impunity, for one hour, to hold in imprisonment an American citizen for presumed acts committed in America, thereby defiantly ignoring your citizenship, and consequently the right of the United States to confer it. I seek no organized or organization interest in my behalf. I will fight my own battle while there is a rule left. I know my rights, and will seek them; and if I have not in the ordinary walks of life made friends sufficient to see justice done to me now, let my case go. I am only an humble individual; but protect the sacred right of citizenship. I have placed my case on the desk of the President, as will be seen by the subjoined letter. I have in a true and independent style stated my case. It is short. I am a United States citizen. I have violated no English law. I am falsely imprisoned, and seek his protection. And I am sure that that independence of character which marked his noble conduct on the occasion of the patriotic position which he took in his native State, when native enthusiasts, instigated by material aid and still further promises from England, nearly pulled down the temple of liberty, will, on the occasion of this encroachment on the Constitution of the United States, and abuse of her citizens, when properly placed before him, rouse his Old Hickoryism again, and, in discharge of his grand mission, he will independently notify John Bull that now and forever more no citizen of the United States is to be touched for acts committed in the United States; and, as an indication of what he is going to do, and what he will do, he will despatch, "Drop that Irishman, Warren, you have in No. 17, Kilmainham. The keeping of him twenty-four hours longer won't be conducive to your health."

I am, fellow-countrymen, as ever, no better or worse,

JOHN WARREN.

Mr. Rice to Mr. Seward.

Boston, September 30, 1867.

DEAR SIR: W. C. Nugent, at present a Fenian prisoner at Dungarvan, Ireland, belongs in Boston, and served in the second Massachusetts heavy artillery during the recent rebellion. His father, Richard Nugent, has placed in my hands certain papers, which I here enclose,* with the request that I will transmit them to you, in the hope that, through their use by the American minister at London, the liberation of W. C. Nugent from prison may be effected.

With great respect, your obedient servant,

ALEX'R H. RICE.

HON. WILLIAM H. SEWARD,
Secretary of State. Washington, D. C.

Mr. Nugent to Mr. Rice

Boston, September 11, 1867.

DEAR SIR: The following are substantially the facts, as far as I am informed, in relation to my son, W. C. Nugent:

He left Boston last spring, to go to New York, and I heard nothing from him until I received a newspaper from Ireland, sent by him, informing me of his arrest. Since that time I have received letters from him giving an account of his transfer from Waterford jail (where he was first confined) to Kilmainham jail, in Dublin, where he remains at present. He had no papers, nor anything else, (to cause his imprisonment,) about him, but was arrested, with a number of young men, on suspicion of being connected with the Fenian movement. As he had no passport, or other proof of being an American citizen, he wishes me to forward such proof. If the papers can be forwarded to him by your kindness, through Minister Adams, I make no doubt that they will prove sufficient to procure his discharge.

Respectfully, your obedient servant,

RICHARD NUGENT.

HON. A. H. RICE.

Mr. Nagle to Mr. Seward.

MOUNT JOY PRISON,
Dublin, Ireland, October 1, 1867.

SIR: I have received a letter from Hon. Charles F. Adams, United States minister, London, dated September 23, informing me of the order issued to remove me from Kilmainham jail to this prison, for the purpose of affording some relief to my health, which has suffered from the confinement to which I have been subject since the 1st of June last. Mr. Adams also says: "I have been endeavoring to do my best in your behalf to secure you a trial, if not an absolute release. I doubt not it could have been accomplished before this but for the unfortunate revival of the excitement produced in the public mind by the late event at Manchester."

Four months have passed since my arrest, during which time I have been subject to close and rigorous confinement, from which I have been injured in health, besides the wrong done my family and the unjustifiable violation of my rights and liberty as a citizen of the United States.

*Enclosures sent to consul at Dublin, October 11.

I believe your excellency has been informed of the facts in my case, and for your prompt and early action in the matter I return my sincere thanks. But I am surprised and disappointed at the delay and, I must say, cold manner in which the representatives of my country here treat the subject, and for this reason I write to you, confident that you will see justice done in this serious case. It is over a month since our consul, Mr. West, informed me that Mr. Adams had made application for my release, and I infer from his letter that no answer has yet been returned to his request.

Having offended no law, committed no act within the territory of Great Britain which should subject me to the laws, and protesting against the wrong and injury done me, I demand my liberty, which is my birthright, and of which I am deprived by a foreign power to which I owe no allegiance. I have been taught to regard the liberty of the citizen as a sacred and inviolable right, which it was the duty of my government to protect and defend. I ask as a citizen of the United States that protection, and through you, sir, make my appeal against the oppression inflicted on me.

I deny the right of Great Britain, or any foreign power, to deprive me of my liberty on mere suspicion, without any process of law, and hold me a prisoner during its pleasure, refusing to make any charge, but awaiting the current of events to cast up some plausible cause that may afford appearance of justification for the act.

Mr. Adams tells me the occurrence of some event in Manchester has delayed the accomplishment of his efforts in my behalf. I ask, with all due respect, what connection can there be between my right to freedom and events in Manchester? Am I to remain in prison because some portion of her majesty's subjects break the peace? If so, and my government is content to rest its action until discontent ceases within these realms, I will pass the remainder of my life within these walls.

Four months should certainly offer sufficient time to this government to gather, from informers and other reliable sources, any information that may be had to show cause for its action, and enable it to answer the demand for my liberty, showing good cause for my arrest and imprisonment, or, failing in that, to honestly and without delay restore me to home, friends, country, and freedom.

I do not think it is necessary for me to urge at greater length my case. I have been patient under my wrongs and sufferings, feeling that I can look with confident hope to my country for protection and justice; that those in whose hands were placed the liberty and honor of the nation would guard with jealous and watchful eyes, and defend with unyielding firmness, the liberties of her children wherever trade, commerce, or pleasure might place them. And especially to you, honored sir, have I good reason to look for protection of that liberty of which you have during life been the advocate and champion, and that in none, even the humblest citizen, will the principles of our government be slighted or her character be insulted with impunity.

With every reliance in the justice of my cause, and my conscience acquitting me of any wrong, I rest my case, feeling assured that my country will protect her citizens, and that my best shield and proudest defence is that I am an American citizen.

I have the honor to remain your obedient servant,

WILLIAM J. NAGLE.

Hon. WILLIAM H. SEWARD,

Secretary of State U. S. A.

Mr. Nagle to Mr. Seward.

284 PACIFIC STREET, BROOKLYN, *October 22, 1867.*

DEAR SIR: I respectfully beg leave to enclose for your consideration a printed copy of a letter addressed to me by my son, Colonel William J. Nagle.

Your numerous friends in New York are really astonished at the apathy of our government in not demanding the unconditional release of Colonel Nagle, who has committed no overt act nor violated any law that should subject him to a felon's prison in Dublin for the last five months.

I again earnestly beseech you to protect the rights of Americans citizen abroad as well as home.

Yours, truly,

D. M. NAGLE.

Hon. WILLIAM H. SEWARD,

Secretary of State.

[Letter from Colonel Nagle.]

HOW AMERICANS ARE HATED—FLUNKEVISM AND COOL IMPUDENCE OF MR. ADAMS.

MOUNT JOY PRISON, *Dublin, September 30, 1867.*

DEAR FATHER: Your letter of the 27th of August was received on the 9th instant, and I would have answered it before now, but I have been awaiting an answer from Minister Adams with reference to his application for my release. I received the accompanying letter from him, from which it appears he has not yet received any reply to his very proper and just request: but that the acts of some party, to me unknown, in Manchester, have probably delayed my release. As I understand the matter, Mr. Adams received instructions from my government to demand my liberty, or that good and sufficient cause should be shown for my imprisonment and the wrong and injury I have suffered at the hands of the British government. The question is a plain and distinct one, requiring no extraordinary effort of diplomacy to answer, and, in justice, should not be unnecessarily delayed. The liberty of American citizens has been taken from them: all their rights violated: subjected to the humiliation, hardship, and suffering of the severest prison discipline: torn from friends, home, and country: health impaired: family injured. And we ask for what? No answer. We naturally turn to the representatives of our government to protect and aid us: and at the end of four months, after the action of the authorities at Washington, the United States minister at London meekly informs me that he has procured for me the gracious privilege of Mount Joy, where it is to be hoped my health may be relieved from the utter ruin which threatened it under the confinement and severe rules of Kilmainham. Should I not be thankful for the privilege of feasting my eyes upon the green hills, although surrounded by prison walls, and admire the mercy and kindness of this government? Again, I am informed that my release might have been accomplished were it not for some occurrence in Manchester, which has excited the public mind. A month or more has passed since. Mr. Adams, in accordance with instructions from the United States government, asked for my liberty, and the authorities here have not deigned, as yet, to answer it. Our most patient minister is not disturbed by the current of diplomatic intercourse which moves so smoothly on: let Brother Jonathan remember he was once a subject, and humbly await the pleasure of this gracious British government. A few months more or less in their prison cells is of no importance to these citizens of the great republic and late defenders of her life against the assault of foes within and treacherous friends without, in comparison to the social and pleasing relations existing between our representatives at the court and castle, which should not be disturbed.

I have not desired Mr. Adams or Mr. West to petition for my liberty. I scorn to receive as a favor what I demand as a right. Aside from the individual, physical, and moral injury done me, there is another great question involved, before which all personal matters sink into insignificance. The reputation and character of my country is involved in it. Will the United States maintain its own honor among the nations of the earth by defending the liberties of her citizens abroad? Or are they to be subject to the oppression and caprice of every government in Europe in which they may chance to roam; deprived of all that man holds dear in life, and no redress? If so, let the fact be proclaimed, that all may act accordingly.

I will write to Mr. Seward by the next mail, and wait the further action of my government. It cannot be possible that the authorities at Washington will allow this cold and spiritless action of Mr. Adams, any more than the contemptuous silence of the government

here, to pass unnoticed. Mr. Seward has always maintained with dignity and spirit the inviolability of the rights of the Americans abroad, and the sacred duty of the government to protect them, and I feel sure that able statesman will not be found negligent in a case so palpably clear and just as this.

My health has been poor for the last month, but I trust the change here will benefit me. I have more out-door exercise, better air, and better treatment every way. Colonel Warren and myself were brought here on the 23d instant. Mr. Collins complains to me, very justly I think, of your neglect to answer his letters. I will say no more about money matters, but it does not appear to me very strange that relief has not been sent me from some source. I told you to write to Mr. Marrin about the position I was in, for I believe he had the power and will to help me. If I am to be held until the meeting of Congress there will be a plain course of action to follow, and I will forward you the necessary papers. In the mean time, you should send the petition to this country for signatures, and have it ready to accompany my papers at the assembling of Congress.

My love to mother, Emily, and all. A friend from Dublin will call to see you.

Your affectionate son.

WILLIAM J. NAGLE.

Minister Adams's reply.

LEGATION OF THE UNITED STATES,
London, September 23, 1867.

SIR: I am in hopes before this time that the orders for transfer to another place where the privileges are greater than at Kilmainham will have reached the authorities. This may be some relief to your health, I trust.

I have been endeavoring to do my best in your behalf, to secure you a trial, if not an absolute release. I doubt not it could have been accomplished before this but for the unfortunate revival of the excitement produced in the public mind by the late event at Manchester.

I very much regret the suffering to which you are subjected, and shall continue to do all in my power for your relief.

I have the honor to be, sir, your obedient servant.

CHARLES FRANCIS ADAMS.

Colonel WILLIAM J. NAGLE, *Kilmainham Jail, Dublin.*

Mr. Mullen to Mr. Seward.

No. 111 NASSAU STREET,
New York, October 29, 1867.

DEAR SIR: I take the liberty of enclosing two open letters addressed to my friend and former co-editor of the Irish Press, with the request that they be forwarded to the American consul at Dublin for delivery to Mr. Meany. If compatible with the public service I hope that the request will be granted.

Mr. Meany during the last political canvass in this State did good service and ably supported the foreign policy of this administration.

His case, Mr. Secretary, is a hard one, and in my judgment merits a prompt interference in his behalf. Enclosed is a slip from the Irish Citizen, which puts his case I think fairly.

I have the honor to remain, Mr. Secretary, your obedient servant,

B. F. MULLEN.

Hon. WILLIAM H. SEWARD,
Washington, D. C.

CITIZENS OR NOT.

To the Editor of the Irish Citizen:

SIR: I rejoice to find the first number of your new journal calling the attention of our government and people to the case of our fellow-citizens who are now confined without trial in British prisons: and I trust that you will not abandon the subject until the whole question of the rights of naturalized citizens, at home and abroad, is definitely settled.

It is humiliating to all true Americans to feel the necessity of having this question repeatedly forced on the attention of those who at present are intrusted with the honor of the republic in its dealings with foreign powers. From various sources have appeals been made during the past eighteen months, with the same result. The Executive invariably admitted their justice, and referred them, with instructions, to the Secretary of State, who disposed of them in true "red tape" style.

It is now over two months since the Hon. Fernando Wood addressed a dignified remonstrance to President Johnson on the subject, in which he specially referred to the case of Colonel Nagle and Captain Warren, (who were arrested and imprisoned in Ireland in the beginning of last May, without any charge having been preferred against them,) and prayed him to order their immediate release. The President, coinciding in Mr. Wood's views, referred the matter to Mr. Seward to take action thereon, and the Secretary, in his reply to Mr. Wood, stated that, having communicated with the British minister on the subject, the latter assured him that steps had been taken for the immediate release of the parties referred to. If so, her Majesty's representative lied like a Briton, for the gentlemen are still the inmates of a British prison. Will Mr. Seward account for the disgraceful fact? Is he aware that while he was ruralizing with the British baronet untried prisoners in Irish jails were being done to death "without form of law"? To be sure, they were only mere Irish *subjects* of Victoria. But, if British officials are allowed sufficient time by our apathetic Secretary, the fate of Stowell and Harbison may overtake the scores of American citizens now incarcerated in her Majesty's prisons, for the heinous crime of having on this soil formally renounced all allegiance to the old lady. Or, should the process be found too slow, our Secretary should be aware that there is a "little bell" in Downing street, which the British juggler need but touch, and *præsto*, the requisite machinery is set in motion. A special act of Parliament, a "special commission," an "intelligent" sheriff, a "select" jury, a "loyal" judge, and, before all, a new patent self-priming-double-action informer, constitute the "mechanism" by which your gallant defenders of the great republic are forthwith transformed into crep-headed convicts, and consigned to a worse fate than was ever endured by the denizens of Fort Lafayette or the Dry Tortugas. Many of your Irish readers have a vivid recollection of how the machinery worked in Green street in 1848. But only a few months have elapsed since American citizens have been sacrificed by the same process. For the present I need only refer to the case of Stephen J. Meany, but, in a future letter, I shall, with your permission, direct attention to the rest of the American citizens who, like him, are now undergoing the convict's sentence.

For publicly avowing on American soil his antipathy to British rule in Ireland, and his sympathy with an oppressed people, Mr. Meany was arrested in England, and transferred to Ireland to be tried, convicted and sentenced to *twenty years penal servitude*—notwithstanding his manly appeal for protection to the government of the United States. The men in whose behalf Mr. Wood has so nobly exerted himself are both amenable to the same charge as Mr. Meany, and if our government remain inactive, may be doomed to the same punishment. Even Mr. Wood himself, according to the same rule, might (but for a wholesome fear of the consequences) be now enjoying the pleasure of their society in an Irish prison; for just before his recent visit to Ireland he addressed a meeting of Irish revolutionary sympathizers in this city, and in language as strong as was ever used by either of the gentlemen whose cause he has undertaken, he denounced the tyranny of England, and pledged all the aid in his power towards advancing the cause of Irish independence, when the time came for asserting her rights on the battle-field; and furthermore, in his letters, written in Ireland, to the American press, he scathingly exposed the wrongs of the people, and denounced the laws under which they suffer. Yet, though the "habeas corpus act" was suspended, he was permitted to pass without let or hindrance, and so he is now in a position to aid in redressing the wrongs of his less fortunate fellow-citizens. Colonel Nagle being a native, and Captain Warren an adopted citizen, and the circumstances under which they were arrested being identical, it is fortunate that their case has been brought so prominently before the American public, as the result of the application in their behalf will naturally aid in deciding the vital question. What rights does our government accord to citizens, native or adopted, while peaceably sojourning in a foreign country? Or does it recognize any difference in their respective claims to its protection? The great American people do not; nor are they responsible for the course taken by the administration. Their representatives in Congress, of all shades in politics who passed a resolution of sympathy in the cause of revolution in Ireland and Crete, were not likely to place any impediments in the way of the Executive had the latter determined on a foreign policy which has been discarded by our rulers since the days of President Pierce's administration, when Captain Ingraham so nobly vindicated the national honor abroad, and for so doing received the thanks of Congress and the approbation of President and people. It is time that our government should return to this policy, and if our adopted citizens are true to themselves and faithful to the principles of genuine republicanism, they can compel its adoption. Let them make the subject of their political rights, when sojourning on side the bounds of the United States, paramount to all others at the coming elections; and pledge all who seek the honor of representing them in Congress or the State legislatures to advocate the passage of an act which will, for all future time, render it impossible for any administration to refuse protection to the poorest citizen of the republic in whatever quarter of the world he may be found.

The men who will take the initiative in introducing a bill to the foregoing effect in Congress, or aid in making it a law of the land, will forever merit the confidence and gratitude of all lovers of human freedom.

AN ADOPTED CITIZEN.

Mr. Savage to Mr. Seward.

EXECUTIVE OFFICE, FENIAN BROTHERHOOD,

No. 823 Broadway, New York, November 11, 1867.

SIR: It is stated on the authority of the English press that at the instance of the United States government counsel have been engaged for the defence of William J. Nagle and John Warren, American citizens, who have been, it appears, indicted for treason within the jurisdiction of the British authorities.

I respectfully ask if this statement has any foundation in fact. An answer involves matters of deep interest to a large number of citizens whom I have the honor to represent. Thousands of those citizens have served the republic on the field. Thousands have won these citizenships helping to save the republic. Thousands are maimed for life in the service, and bear honorable scars in testimony of their *allegiance* to the United States government.

The circumstances which suggest this note of inquiry create a feeling of profound anxiety among this large population of adopted citizens who believe that they cannot hold allegiance to two powers at once, and that they cannot commit treason against a power to which they owe no allegiance.

A paramount condition of citizenship is that the applicant for its duties, its rights, and its honors, must unreservedly abjure and renounce on oath all allegiance to foreign powers and potentates.

Without this solemn renunciation he cannot be a citizen of the United States. With this renunciation can he be a citizen of any other state?

Without this renunciation his allegiance cannot be compelled by the United States government. With this renunciation can his allegiance be compelled by any other government? It would seem to be a question between these governments to settle the citizenship and allegiance of the man.

It is needless to say to you, sir, that this question of the relations of a government to its citizens is of the widest importance. Under the circumstances alluded to, it affects the condition of a vast element of the population, and must necessarily force itself on public attention until it is definitely settled.

Awaiting a reply, I have the honor to be, respectfully,

JOHN SAVAGE,

Chief Executive Fenian Brotherhood.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

Mr. Taylor to Mr. Seward.

SHELBYVILLE, KY., November 13, 1867.

SIR: I see by the foreign telegram of this date that W. T. Halpin's trial was concluded on the 12th instant at Dublin, before a special commission, and that the jury brought in a verdict of guilty of treason and felony. He volunteered in the United States service in 1861, and remained until the organization (15th Kentucky volunteers) was mustered out, after a service of three years and four months, and was promoted from captain to lieutenant colonel; and during this time he participated in the battles of Perryville, Stone River, Chickamauga,

Chattanooga, and in the Sherman campaign that resulted in the capture of Atlanta; and being his companion in arms in these trials, and knowing his true worth, I cannot withhold my entreaties in his behalf, and ask of you to save his life. This government should intercede for this brave man, who has so often risked his life to save the life of this great nation. May I hope that you will use your influence to save my friend and late companion in arms!

Yours, truly,

M. C. TAYLOR,
Late Colonel Fifteenth Kentucky Volunteers.

HON. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.

Messrs. Burke and Benson to Mr. Seward.

1 BARCLAY STREET, NEW YORK,
November 13, 1867.

SIR: In compliance with the instructions given in the following resolution, we beg to call your attention to the report of the decision of Chief Baron Pigott, a copy of which is herewith appended in the case of Captain John Warren, recently tried for treason-felony, in Dublin, Ireland.

As ex-officers of the Irish brigade, an organization to whose record during the late war for the Union we can point with pride, we feel entitled to request from you, sir, a definition of our political status in the United States.

In our naturalization oath we distinctly renounced our allegiance to the "Queen of Great Britain and Ireland," and we now apply to you as the proper exponent of international law to inform us whether we are to look upon the act of naturalization under the law of the United States as a solemn act, equally binding on the honor and dignity of the United States and the persons naturalized.

Respectfully requesting a reply at your earliest convenience, we are, sir, very respectfully, your obedient servants,

P. M. HAVERTY,
Brevet Major United States Army.
DENIS F. BURKE,
Late Colonel 88th N. Y. Vols., and Brevet Brig. General.
WILLIAM BENSON,
Late Captain 69th N. Y. Volunteers.

HON. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.

At a special meeting of the Irish Brigade Officers' Club, held at their rooms on Tuesday, the 12th instant, the following resolution was unanimously adopted:

Resolved, That a committee of three be appointed to correspond with the Secretary of State, and draw his attention to the decision of Chief Baron Pigott, of the Irish bench, in the case of Captain John Warren, and request from him an enunciation of his views on this important subject.

[From the Dublin Weekly News, November 2, 1867.]

Mr. Heron said it was a matter of favor to grant a jury *mediatæ lingue* to any person, and his client now instructed him to apply for a jury composed half of American citizens and half of British subjects.

Mr. Dowse said the prisoner had been admitted to the Commonwealth of the State of Massachusetts, and that, therefore, he was an alien, although originally a subject of the British Crown. He was entitled to a *venire*.

The chief baron said the bench had no doubt as to the course they should adopt. According to the law of England, he who was once under the allegiance of the Crown remained so

forever. His lordship read a passage from Blackstone, which laid down that a natural-born subject of the British Crown could never shake off that allegiance, no matter where he might take up his residence. The learned judge also quoted from Judge Story's "Conflict of Law," page 23—an eminent American authority—who stated that "every nation had a right to bind its own subjects at all times and in all places." "Kent's Commentaries" also affirmed that it was not in the power of any subject to shake off his allegiance. The same work, referring to America, laid down a similar doctrine, and concluded by saying: "On this historical review of the discussion on American jurisprudence, the better opinion would seem to be that a citizen cannot renounce his allegiance to the United States government without the permission of the government be declared by law; and that as there is no existing regulation in the case, the rule of the existing English law remains unaltered." The application made for the prisoner was certainly a proper one, if he were entitled to it; but it was perfectly plain that a person who claimed such a jury should be an alien. He (the learned judge) could not, however, allow that proposition to be put forward on the present occasion without meeting it by a prompt and immediate denial. According to the law of England, a person born in the United Kingdom owes his allegiance to England forever, and no matter where he might be. Under the circumstances they considered that the objections of the attorney general were well founded.

Mr. Gibbons to the President.

PHILADELPHIA, November 16, 1867.

DEAR SIR: Permit me to place before you the enclosed; it is the opening of the trial of Colonel Warren in Dublin. It bears directly on the subject of a former communication I had the honor of transmitting to your excellency, and adds strength to the suggestions therein contained. The newspaper from which I have clipped the editorial has eight thousand of a circulation.

I have the honor to be your most obedient servant,

JAMES GIBBONS.

His Excellency ANDREW JOHNSON,
President of the United States.

HOME CORRESPONDENCE.

THE CASE AGAINST THE IRISH-AMERICANS.—IMPORTANT QUESTIONS.—TRIAL OF COLONEL WARREN.

DUBLIN, October 31.

The court-house in Green street became pretty full at an early hour on yesterday morning, and considerable interest was manifested in the proceedings, it having been announced that the trials of the prisoners charged with treason-felony would commence that day. The lord chief baron and Judge Keogh entered and took their seats on the bench shortly after ten o'clock, and immediately afterwards the county jury panel was called on penalties of £20.

The attorney general, the solicitor general, Mr. Owen, Q. C., Mr. Longfield, Q. C., Mr. Murphy, Q. C., and Mr. Beytagh, instructed by Mr. Anderson, Crown solicitor, attended to prosecute on behalf of the Crown.

Mr. Heron, Q. C., Mr. Dowse, Q. C., Mr. Crean, and Mr. Constantine Molloy, instructed at the instance of the American government by Mr. J. T. Scallan, solicitor, appeared to defend Colonels Nagle and Warren.

Mr. Lawless appeared on behalf of General Fariola and Thomas Fruen.

Mr. John Adair, instructed by Mr. Mills, was present to watch the proceedings on behalf of the American consul.

The jury panel having been called over three times, and several jurors not having answered to their names, the chief baron asked the attorney general what course he proposed to take.

The attorney general said there was not a sufficient number of jurors in attendance. He therefore would ask the court to adjourn till 12 o'clock.

The CHIEF BARON. Very well. The court is now adjourned until 12 o'clock. The fines on jurors will be enforced, and I wish now to announce that when we return we shall call the jury panel on fines of £50.

The court then adjourned till 12 o'clock.

On the reassembling of the court at 12 o'clock the jury was called on penalties of £50. Several jurors did not answer to their names, and the lord chief baron stated that in each case

the fine would be enforced, unless a reasonable and satisfactory excuse were given to account for the absence.

Clerk of the Crown. Put forward John Warren.

The prisoner was then placed in the dock.

Mr. Heron applied to the court that the prisoner Nagle might be arraigned along with him. His reason was that he had an application to make on the part of Nagle, who was anxious that his trial should not be postponed beyond the present commission. If there was nothing inconvenient in the course, he hoped the attorney general would accede to it. He had informed the court on a former occasion that an application would be made on the arraignment, but his present application was that both prisoners be arraigned together.

The attorney general refused to accede to the application.

Mr. Heron asked for the indictment, that he might have the names of the witnesses on the back of it before the prisoner pleaded. Having inspected the indictment which was furnished to him by the Crown, he handed in a plea of abatement, which was grounded on an affidavit sworn by the prisoner, setting forth that it did not appear in the indictment that the names of the witnesses indorsed on the back of it by the clerk of the Crown had been sworn or affirmed by the foreman or any other member of the grand jury; and further, that the foreman had not, nor had any other member of the grand jury, authenticated the same by his signature, or any part thereof. Therefore he prayed that the indictment might be quashed. He grounded his application on the 1st and 2d Vic., cap. 37, sections 1 and 9.

The Crown counsel retired for a considerable time to consider the plea. On their return into court, the attorney general stated that the Crown demurred to the plea of abatement.

Mr. HERON. We join in demurrer.

The court allowed the demurrer.

Mr. Heron made his application on behalf of Nagle a second time.

The attorney general said that when Warren's trial was over he would accede to the application.

John Warren was then indicted for treason-felony in the usual form.

The prisoner pleaded not guilty.

Mr. Heron handed in a suggestion on behalf of the prisoner that, being a citizen of the United States since the 1st of October, 1866, a jury composed of six foreigners and six of her Majesty's subjects should be sworn to try him. He proposed to try the question with the Crown. He therefore applied that his client be tried as an alien.

Mr. Dowse said the prisoner's counsel affirmed that he was a citizen of the United States of America, which, in law, meant an alien and not a subject of her Majesty; and in case it should be necessary to bring the question before a higher court, the prisoner's counsel asked that the court should receive the suggestion, and that it be put on the file of the court. The learned gentleman was proceeding to read the "naturalization paper" of the prisoner, when

THE ATTORNEY GENERAL said: I object to your reading that document unless it is proved.

Mr. DOWSE. Well, here is the American seal, and will be regarded here. The prisoner was declared a naturalized citizen of America in October, 1866, and you will admit he is a year and a half old now, (laughter.)

THE CHIEF BARON. There is nothing to prevent you stating he is an alien by reason of his being a citizen of the United States.

Mr. Dowse said they would alter the suggestion accordingly.

The attorney general objected to the suggestion being received.

The chief baron considered that the suggestion should be sustained by evidence before it was received, as in McCafferty's case.

The suggestion was then amended by adding that the prisoner was born in Cork, in Ireland, of American parents.

Mr. Heron next read the certificate of the naturalization of the prisoner, under the Commonwealth of the State of Massachusetts.

On the attorney general still objecting to the reception of the suggestion, it was further amended thus: "Born in Cork, in Ireland, of Irish parents, the said parents and the said county being then under the allegiance of King William IV." The words, "and the said county," were then struck out, and the suggestion was received as amended.

Mr. Heron said it was a matter of favor to grant a jury *mediatæ lingue* to any person, and his client now instructed him to apply for a jury composed, half of American citizens and half of British subjects.

Mr. Dowse said the prisoner had been admitted to the Commonwealth of the State of Massachusetts, and that therefore he was an alien, although originally a subject of the British Crown. He was entitled to a *venue*.

The chief baron said the bench had no doubt as to the course they should adopt. According to the law of England, he who was once under the allegiance of the Crown, remained so forever. His lordship read a passage from Blackstone, which laid down that a natural born subject of the British Crown could never shake off that allegiance, no matter where he might take up his residence. The learned judge also quoted from Judge Story's "Conflict of Law," (page 23,) an eminent American authority, who stated that "every nation had a right to bind its own subjects at all times and in all places." "Kent's Commentaries" also affirmed that it was not in the power of any subject to shake off his allegiance. The same

work, referring to America, laid down a similar doctrine, and concluded by saying: "On this historical review of the discussion on American jurisprudence, the better opinion would seem to be that a citizen cannot renounce his allegiance to the United States government without the permission of the government be declared by law, and that, as there is no existing regulation in the case, the rule of the existing English law remains unaltered." The application made for the prisoner was certainly a proper one, if he were entitled to it; but it was perfectly plain that a person who claimed such a jury should be an alien. He (the learned judge) could not, however, allow that proposition to be put forward on the present occasion without meeting it by a prompt and immediate denial. According to the law of England, a person born in the United Kingdom owes his allegiance to England forever, and no matter where he might be. Under the circumstances, they considered that the objections of the attorney general were well founded.

After a few challenges on the part of the Crown and the prisoner, the following jury was then sworn: William Mercer, (foreman,) Alfred Davis, George Cooke, Henry William Hopkins, William Henry Malins, Edward Nolan, William Maryon, Robert Robinson, William Shaw, Robert Thacker, Charles David Spinks, and William White.

The PRISONER said: As a citizen of the United States, I protest against being arraigned at this bar.

The CHIEF BARON. We cannot hear any statement from you now; you have counsel engaged, who will speak for you, if necessary.

PRISONER. My citizenship is ignored, and I have instructed my counsel to withdraw. The government of the United States has now become the principal.

Mr. HERON. We have no other alternative; but when the prisoner withdraws from his counsel I think, my lords, it would be well to hear his statement. I have just been acquainted that the prisoner still adheres to his determination.

Mr. DOWSE. If my client withdraws from me, I withdraw from him. I disappear accordingly.

Mr. HERON. Your lordships will perhaps allow me to say, before I withdraw, that the prisoner ought to be allowed to state his reasons for taking this course.

Mr. Dowse, Mr. Heron, and Mr. Molloy, then rose and left the court.

Mr. Adair said he was instructed on the part of the United States government to watch the proceedings. He was instructed by the United States consul; and now that the counsel had withdrawn from this case, he wanted to know from their lordships how far it was his duty and privilege as counsel to attend, and whether he should interfere or not interfere.

The CHIEF BARON. If you are not acting as counsel for the prisoner, we cannot allow you to interfere. If you appear as his counsel, of course, you may interfere.

Judge Keogh asked if the prisoner had accepted his assistance.

Mr. Adair said he had not, and was proceeding to make some further remarks, when

Judge Keogh said, you have already interrupted the court, and you are not engaged for the prisoner. You are acting most irregularly as a barrister.

Mr. ADAIR. I consider it my duty and my right to address the court. Your lordship says I am acting irregularly as a barrister. I hope that expression will appear in the public papers.

The attorney general then proceeded to state the case for the Crown. He stated that the prisoner was charged with being a most active member of the Fenian conspiracy; with having attended Fenian meetings: with having embarked in America in a brig laden with guns and pistols, and landing them, or some of them, in Sligo bay; with endeavoring to incite evil disposed persons to rise in insurrection, and to fight against the Queen; with levying war against her Majesty in the county Dublin on 6th March last, and with having administered an unlawful oath to a man named Michael Gallagher, in Sligo bay. Although the prisoner did not make war in person in the county Dublin on the 6th March last, still he was responsible for it as if he was there. The attorney general then proceeded to say that on the 12th of April last, the prisoner, with from forty to fifty others who had served in the American army, went aboard a brig called the Jackmel, in New York harbor, and without papers or clearance, sailed for Ireland. He would be able to produce the names and military rank of all on board, both by written and parole evidence. On their arrival in Ireland twenty-eight were arrested by the government authorities, and are now in custody. Amongst them are three men named Buckley, Nolan, and Mayne, all of whom would be produced on the table, and would depose to the circumstances. Documents had been found on the prisoner Nagle, which he, (the attorney general,) in the absence of counsel for the prisoner, would not refer to, but which would appear in the course of the trial, when the court could decide as to their admissibility as evidence. In the course of his remarks, the attorney general stated that the prisoner had, in 1862, been dismissed the American service from some unexplained cause.

At the conclusion of the attorney general's speech, Colonel Warren rose in the dock, and said:

I take this, the earliest opportunity, of contradicting and denouncing the vile falsehood by which, in the speech just concluded, a stain for the first time is sought to be cast upon my character and position as an officer of the American—

COURT. This really is irregular, prisoner: we can't hear you at this stage—

Colonel Warren. My lord, on the mere statement of a perjured traitor, it has gone forth here that I was dismissed the American service. It is a falsehood, told for a villainous purpose—

ATTORNEY GENERAL. Oh, really, my lord, this is——

COLONEL WARREN. Such an act towards a man in my position here, is cruelty and cowardice; and I here denounce it as the act of a liar and a coward. [Great sensation.]

COURT. I presume, Mr. Attorney, we had better adjourn now. It is now five o'clock.

ATTORNEY GENERAL. Yes, my lord; the first witness will occupy a great length of time.

COURT. Very well, then; we will now adjourn.

As the judges were rising on the bench, the chief baron said:

Prisoner, if, notwithstanding what has occurred, you, on reflection this evening, should decide—as I do, indeed hope you may—to recall your resolution of not making defence or being defended, the court will freely permit you to do so, and, entirely and solely, for your own sake, I hope that you may reconsider that resolve——

COLONEL WARREN [bowing profoundly.] My, lord, with the deepest and most sincere respect for your lordship, I thank you; but I cannot alter that resolution.

CHIEF BARON. Whether you do or not, will not alter the procedure of the trial.

COLONEL WARREN. Oh, I know that; but the real question at stake affects millions of my countrymen. I have acted on principle. I cannot be inconsistent with myself——

CHIEF BARON. Well, I am sorry: solely on your account.

COLONEL WARREN. My lord, I am prepared for the consequences. I may be convicted here after any fashion the government pleases; but, (raising his voice,) the case will be settled by a higher court—the American nation!

[From the Irish American, November 9, 1867.]

AMERICAN CITIZENSHIP.

If there is anything in their connection with this republic on which, more than all else, our people pride themselves, it is the citizenship conferred on them under the provisions of the Constitution. The material prosperity they enjoy, the wealth their industry creates, the positions to which, if possessed of energy and ability, they may aspire and attain, are all well enough in their way; but they are, after all, only component parts of a great whole, and that whole is concentrated in the idea of the naturalized Irishman, when, with as much pride and exultation as may have been felt by the Roman of old, he says, "I am an American citizen." Men born on the soil of freedom, and inheriting, without trouble or difficulty, the priceless boon which others toiled, and fought, and died to bequeath to them, may feel astonished at this ardent longing for what to so many seems to embody nothing higher than the privilege of exercising the franchise or holding office, even as one who has been well fed and pampered all his life may wonder how any one should care for the food which he almost loathes from satiety. They have never had the iron of alien oppression driven into their souls; they have not felt—and therefore cannot understand—the fierce hunger for liberty which, stronger than physical necessity, drives men to risk life, and comfort, and family associations rather than endure the rule of a master foreign to them in blood, and instinct, and interest—one whose prosperity has been built upon and fostered by their misery, whose triumphs and successes only rivet more firmly the fetters under whose weight they groan, and whose destruction is the only hope of future liberation to which they can turn. The people of Ireland feel, and have felt, all this for centuries; and the thought of casting for ever from them the hateful bondage from which they have escaped, is one of the impelling motives that induce the vast majority of those who reach these shores to seek and acquire naturalization as speedily as possible.

Well, we become American citizens; and, so long as we choose to abide within the confines of the republic, it must be acknowledged that we are, as a general rule, fairly treated as such by our fellow-citizens of native birth. But neither can it be denied that our people, as a class, have honestly earned the right to the character, for on many a stricken field, wherever the flag of the Union waved above her children who fought and fell to preserve its folds unsullied and its stars undiminished, there, too, were found the expatriated sons of Ireland, battling in defence of the same cause, and dying that the republic which gave them shelter might live. So our title is clear both in law and equity, and we are recognized as citizens (with a trifling limitation as to the highest executive offices,) in the same sense as though we and our fathers had possessed the land for generations. Yet, strange as it may appear, we are compelled to ask, at this late day, of what value is all this? An Irish-born citizen of the United States dare not visit the land of his fathers to-day, for fear some "suspicious" policeman may arrest and consign him to a prison, as so many American citizens—men who have fought and bled for the United States, have been arrested and imprisoned within the past two years—and their citizenship, instead of being a panoply of defence, has been regarded as an additional reason why they should be watched, arrested, and prosecuted. The issue, however, has been raised at last in a definite shape in the case of Colonel John Warren. The American people went to war with England, in 1812, on this very question of holding to perpetual allegiance those born under her sway. They thrashed her soundly on sea and land, until she was glad to cry "hold—enough!" and make peace with

them. But what she failed to achieve by force of arms she gained by diplomatic chicanery; and the war ended without a tangible definition of the rights of American citizens. It is time that an end was put to this anomalous state of things, in which the salaried hangman of a power which literally exists to-day by the favor and sufferance of the United States, can tell us from the bench that his government spits upon our citizenship. As Colonel Warren has bravely and truly said, it is no longer a mere individual who is arraigned before a British jury, it is the American government that is now on trial before the world in the case of its citizens denied the rights which the vilest felon is entitled to claim. The snappish, uncourteous way in which the counsel for our government was treated by the perjured traitor on the bench, shows the animus of English officials towards us. It is time the American nation was heard in reply. Let the question then be agitated at once, and vigorously in behalf of all adopted citizens, but especially those now suffering unjust and illegal incarceration. Let the meeting for that purpose in this city on the 26th inst. be the signal for similar gatherings all over the Union. As a government of the people, the President and Congress cannot refuse to render a decision on a question that so vitally affects millions of Irish and German-born citizens; and when that decision is rendered, a million of fighting men, both here and in Europe, will be ready to leap into the ranks and enforce it, if need be, against any contesting power. In this case, three hundred thousand fighting Irishmen are ready at any moment to back a demand for the unconditional release of Colonel Warren—which should be required as a proper reparation for the national honor, outraged in the person of a citizen, and to teach England that the certificate of American citizenship is something more than waste paper, to be scornfully disregarded and flung aside by any of her ermined lacqueys.

Mr. Wood to the President.

NEW YORK, November 19, 1867.

Two (2) American citizens, named Michael O'Brien and Edward O. McCondon, are condemned to be executed on Saturday next, at Manchester, England, for complicity in the rescue of the Fenian Colonel Kelly. The Irish people of New York ask your immediate interference in their behalf.

Please reply by telegraph.

FERNANDO WOOD.

ANDREW JOHNSON,

President of the United States.

Mr. Brooks to Mr. Seward.

HOUSE OF REPRESENTATIVES.

November 21, 1867.

DEAR SIR: Last evening the enclosed telegram from New York came to me, for which I ask immediate attention, as the subject is of the highest importance to the parties named.

Yours, respectfully,

JAMES BROOKS.

Hon. WILLIAM H. SEWARD,

Secretary of State.

Mr. Kennedy to Mr. Brooks.

[Telegram.]

NEW YORK, November 19, 1867.

To Hon. James Brooks, M. C.:

Ask the immediate interference of the President on behalf of Michael O'Brien and Edward O. McCondon, American citizens sentenced to be executed in Manchester, England, on Saturday next.

JOHN KENNEDY.

Mr. Seward to Mr. Nagle.

DEPARTMENT OF STATE,
Washington, November 23, 1867.

SIR : The consul of the United States at Dublin is desirous of being furnished with original evidence of Mr. William Nagle's nativity for use upon his trial at Sligo. It is not perceived how *ex parte* affidavits can be made evidence upon this question, nor is it apparent that the Crown lawyers intend to dispute the American citizenship of your son. Nevertheless, for the purpose of meeting any possible exigency, you are recommended to forward to this department the affidavits of his mother, if living, and of the physician or midwife who assisted at his birth, stating the time and place of his nativity. These affidavits should be sworn before the British consul at New York. It may be desirable, also, to forward sworn copy of the church register of his baptism, if such is in existence, attested as true extracts from the original, by the present priest of the church in which he was baptized, certifying his own character and the verity of the copy from the original record under his oath, and testifying, if he is able to do so, that the original record is in the handwriting of the clergyman who administered the baptism.

Your obedient servant,

WILLIAM H. SEWARD.

Mr. Nagle to Mr. Seward.

NO. 9 WYCKOFF STREET, BROOKLYN,
November 26, 1867.

SIR : Your letter of the 23d instant, requesting me to forward to the State Department the original evidence of the nativity of my son, Colonel William J. Nagle, now a prisoner in Kilmainham jail, Dublin, "to be forwarded to Mr. West, United States consul at Dublin," is received.

In reply, I beg leave to state, that William J. Nagle was born in Lewiston, Niagara county, State of New York, September 25, 1829. Was baptized by Rev. Father Campion. My wife's accoucheur was Dr. Smith, then a resident of Lewiston. Rev. Father Campion and Dr. Smith are dead some twenty-five years since. Father Campion was then a missionary Catholic priest, and officiated occasionally at Youngstown, Lewiston, and Lockport, in the State of New York, and I am positive the reverend gentleman then kept no regular baptismal record.

I have, heretofore, enclosed to your department, through Colonel Henry Liebenau, the authenticated affidavits of Mrs. Nagle and myself, indorsed by the British consul at this port, who did not scruple to charge *three dollars for his signature*.

We, as Colonel Nagle's father and mother, are well known in this State for the last forty years, where our six sons and three daughters were born and reared. The sponsors who stood for William J. Nagle are also dead.

I sincerely hope that the government at Washington will take immediate action for the release of my son and the naturalized citizens who are now unjustly and cruelly confined in felons' cells in Kilmainham, for sympathizing (when here) with the oppressed of their native land.

I remain, very truly, your obedient servant,

D. M. NAGLE.

HON. WILLIAM H. SEWARD,
Secretary of State.

Mr. Savage to Mr. Seward.

FORDHAM, WESTCHESTER COUNTY, NEW YORK,

November 26, 1867.

SIR : I had the honor of addressing a note to you on the 11th instant regarding the defence of Nagle and Warren, seized on charges of treason against the British government, and suggesting questions which are deeply agitating masses of American citizens, who see their brethren seized, searched, thrown into prison, refused the mode of trial established in the case of alien prisoners, and finally murdered, for want of the commonest courtesy on the part of the representatives of the United States.

On the trial of one of these American citizens in Dublin, the chief baron, as a shield for the illegality of the proceedings, advanced the doctrine of once a subject, always a subject of Great Britain. Of course it was not new ; but circumstances direct special and indignant attention to it now. This doctrine is such an insolent commentary on and defiance of the compact entered into between the United States and its adopted citizens, that the American people, when aroused to a knowledge of the facts, will not, cannot tamely submit to such a humiliating position.

Yesterday was a gala day here, in honor of the evacuation of this city by the British in the war of the Revolution. As I looked on the fine military parade, I thought, in view of the claims by Great Britain on American citizens, what a dazzling and deceptive farce it was ; for if the British doctrine is admitted by America, then there was virtually no evacuation by the British ; the army parading our streets might be termed an army of occupation, for it was largely composed of citizens whose allegiance is claimed, even unto the death, by Great Britain. If the doctrine is admitted, then we are not a country, but a colony of Great Britain.

It would be an insult to the republic to imagine that such a state of things can or could continue to exist. The question will have to be settled, not because it affects individuals alone who desire to extend to other countries the blessings they learned to enjoy here, but because it is vital to every man, and involves the spirit, character, and dignity of the republic.

Believing that negotiation or legislation, or both, must necessarily keep pace with popular and intelligent indignation at the outrages to which attention has been drawn, I have thought it my duty to enclose the following important opinion, on the subject of citizenship and allegiance, by the Earl of Clarendon, when one of her Majesty's government, and to respectfully draw the Secretary's attention to its views as affording a precedent which might be used as a practical basis for action now :

FOREIGN OFFICE, *January 8, 1857.*

MADAM : I am directed by the Earl of Clarendon to acknowledge the receipt of your letter of the 15th ultimo, enclosing a representation which you have addressed to the Secretary of State of the United States, with the view of obtaining compensation from that government for the murder of your son at Grenada, in Nicaragua. Your son, it appears, though by birth a subject of her Majesty, emigrated to the United States in the year 1842, and in the twenty-first year of his age, with the intention of permanently residing there and becoming a citizen of that republic ; he subsequently became naturalized as a citizen of the United States, and took the oath of allegiance to that government, and he *preceded* to and established himself at Grenada as a citizen of the United States. It is not clear from your letter whether before, or at the time of his murder, he had taken any part in the war of which Nicaragua is the theatre, but at all events, at the time of his death he considered himself to be a citizen of the United States, and as such sought protection from their flag by hoisting it over his door.

Under such circumstances Lord Clarendon, however much he may regret the loss you have sustained, feels himself compelled to decline to make any application to the government of the United States in your behalf. Your son, as far as in him lay, deliberately in

him renounced his connection with this country, and died a citizen of the United States. It must, therefore, be left to that government to act as it may think proper with regard to your application.

I am, madam, your most obedient, humble servant,

G. HAMMOND.

Mrs. LAWLESS, 5 Sydney avenue, Black Rock.

It will be seen by this official document—the papers relating to which must be on file in the State Department—that the highest authority in the British government taking cognizance of the subject has distinctly pronounced that the oath of allegiance to the United States declares a British born man free of all claims on and responsibility to her Majesty, as her Majesty's government proclaims itself absolved from any care over or responsibility for protection to him. The case is one clearly covering the question now raised.

I have the honor to be your obedient servant,

JOHN SAVAGE.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

Mr. Collins to the President.

BOSTON, December 7, 1867.

SIR: Herewith I have the honor to forward you a copy of preamble and resolutions adopted by some six thousand of our fellow-citizens assembled at Faneuil Hall, in this city, on the evening of the 7th instant.

Public feeling on the question has grown intense, and all look to your Excellency and the Congress of the nation for an early and final settlement.

I have the honor to be your Excellency's obedient servant,

P. A. COLLINS.

His Excellency ANDREW JOHNSON,
President of the United States.

Preamble and resolutions.

Whereas the government of Great Britain has, without regard for the forms of law, or sufficient justification, seized on the persons of American citizens who happened to be travelling or sojourning within the limits of that kingdom, and having for months detained them in prison, has ignominiously expelled some of them from the said kingdom without assigning cause for such arbitrary arrests and protracted imprisonment—while in other instances the said government has, in defiance of American law, tried and condemned others as British subjects, for words spoken or acts done within the limits of the United States, thus disregarding their American citizenship and assuming the United States to be still under the jurisdiction of British courts of law, and, as in the case of John Warren and others, refusing the privilege of trial by a mixed jury—a privilege which British law accords to every prisoner admitted to be subject to, or a citizen of, an alien power; and

Whereas the government of Great Britain has thus revived and reiterated its ancient doctrine, "once a subject, always a subject," and exacts from all persons born within the British dominions perpetual allegiance to the British Crown in whatsoever country they may afterwards reside, and in pursuance of that doctrine the said government has emphatically denied the validity and legal force of naturalization as provided for by the Constitution and laws of the United States; and

Whereas the application of that doctrine has already deprived one American citizen of his life and many others of their rightful liberties, and tends to the prejudice and insecurity of millions of our fellow-citizens who have availed themselves of our laws of naturalization: Therefore, be it

Resolved, That the time has come when it is no longer just, politic, wise, or expedient to suffer any foreign power to exact service or allegiance of any kind from those who have been naturalized as citizens of the United States; and we firmly but respectfully petition Congress to pass an act declaring the rights of all citizens, native and adopted, to the fullest legal protection while travelling in foreign countries, and we call upon the Executive to maintain and

enforce this principle at all hazards, as we deem it essential to the sovereign and independent character of the nation ; and

Resolved, That, as citizens of the United States, we call upon the Executive and Congress to demand from the government of Great Britain the immediate and unconditional release of all American citizens so illegally imprisoned or condemned as British subjects, who may still be held in durance by that power, and to exact from the said government ample reparation for all injuries thus sustained by citizens of the United States ; and

Resolved, That it is the duty of our government to recall without delay any minister, consul, or other diplomatic agent, who has neglected or refused to use his lawful authority for the proper protection of American citizens travelling abroad ; and

Resolved, That copies of these resolutions, signed by the officers of this meeting, be respectfully forwarded to the President, to the President of the Senate, and to the Speaker of the House of Representatives of the United States.

JOSEPH M. WIGHTMAN,
President.

JOSIAH G. ABBOTT,
THOMAS RUSSELL,
WILLIAM SCHOULER,
C. LEVI WOODBURY,
A. B. UNDERWOOD,
G. WASHINGTON WARREN,
N. B. SHURTLEFF,
WILLIAM L. BURT,
P. R. GUINEY,
PETER HARVEY,
PATRICK DONAHOE,

Vice Presidents.

P. A. COLLINS,
L. J. GARGAN,
Secretaries.

FANEUIL HALL, BOSTON, *December 7, 1867.*

Respectfully forwarded on behalf of the officers.

P. A. COLLINS,
Secretary.

[Indorsement.]

BOSTON, MASS., *December 7, 1867.*

Collins, P. A., Secretary.

Enclosing copy of preamble and resolutions adopted by some 6,000 citizens assembled at Faneuil Hall on 7th instant, calling on the Executive and Congress to demand from Great Britain the immediate release of all American citizens illegally imprisoned or condemned as British subjects, who may still be held in durance by that power, and to exact ample reparation for all injuries thus sustained by citizens of the United States. By the late action of the British government the validity of naturalization as provided for by the Constitution of the United States is emphatically denied.

[Indorsement.—Executive.]

DECEMBER 27, 1867.

Case of Collins, P. A., Boston, Massachusetts.

Encloses copy of resolutions of citizens calling for release of American citizens in England. Respectfully referred to the honorable the Secretary of State.

By order of the President :

R. MORROW, *Secretary.*

Mr. Liebenau and others to President Johnson.

NO. 4 HAMILTON PLACE, NEW YORK,
December 17, 1867.

MR. PRESIDENT: Permit us to submit for your consideration the accompanying copy of Colonel Nagle's petition from Kilmainham prison, Dublin, Ireland. It has been printed together with the petition of the Constitutional

Union Association, of this city, which was the only political body possessed of independence enough to pay their respects to you on your late visit to this city. The petitioner confided his autograph petition to our organization, in consequence of being the first to agitate the subject, as you no doubt will remember. The original is in the possession of the honorable Reverdy Johnson, for presentation in the Senate.

We have the honor to be, very truly and sincerely, yours,

HENRY LIEBENAU,
O. SLOAN HOLDEN,
GEORGE SHERITT,
D. B. NORTHPROP,

Committee Constitutional Union Association.

His Excellency ANDREW JOHNSON,

Executive Mansion, Washington, D. C.

At a meeting of the Constitutional Union General Committee held on Friday evening, October 4, at Masonic hall, the following report and correspondence was submitted by the corresponding secretary, from which it will appear that this association are in earnest in their endeavors to procure the release of Colonels Nagle and Warren.

MR. PRESIDENT: As some members are here to-night who were not present at the special meeting held on Monday evening, July 15, I will, with your permission, briefly state the facts and circumstances under which said meeting was convened.

About the beginning of July last, I received the intelligence that my friend, Colonel William J. Nagle, and his companion, Colonel J. Warren, had been arrested in Ireland for sympathizing with, or expressing a hope for, Ireland's independence, and that they were then suffering incarceration for acts or sympathy expressed in this, their native country. Feeling indignant at such a palpable violation of international law and its privileges, and knowing that every true American does sympathize in the cause of Ireland, and heartily wish her success in her struggles for independence; knowing, too, that the popular, undisguised feeling of our nation is for all countries to succeed in their efforts to overthrow monarchical governments, as evinced in their openly expressed sympathy for the Greeks, the Poles, the Mexicans, &c., &c., and satisfied, from a very intimate acquaintance with Colonel Nagle, as well as information from his father, whom I called on, that they had committed no overt act to warrant their arrest and imprisonment, and knowing them also to be good and loyal citizens, both having rendered faithful service in the army during the late struggle for the preservation of the Union, Nagle having lost three brothers in the service, I felt they were deserving of our efforts to aid in effecting their release; and after a brief interview with our worthy chairman, Daniel B. Northrup, esq., who heartily concurred in the movement, as also did the energetic chairman of our executive committee, O. Sloan Holden, esq., the following call was inserted in the Sunday Times, Herald, and Atlas:

CONSTITUTIONAL UNION GENERAL COMMITTEE.

A special meeting of the above committee will be held on Monday evening, July 15, eight o'clock, at Masonic hall, on Thirteenth street, to take into consideration the unwarrantable imprisonment by the British government of our fellow-citizens, Colonel William J. Nagle, of this city, and Colonel J. Warren, of Massachusetts, for visiting their fatherland.

DANIEL B. NORTHRUP, *Chairman.*

H. S. BAXCKER, *Secretary.*

Accordingly, on Monday evening, July 15, a full and enthusiastic meeting convened, at which the following preamble and resolutions were unanimously adopted:

Whereas we have heard with surprise and indignation of the unwarrantable imprisonment of American citizens in Ireland, arrested on the abject and pitiful pretence of suspicion of being Fenians, and then incarcerated in a loathsome prison, subject to the indignities and manacles of convicted felons, in direct violation of every principle of international law and the comity of nations, in consequence of the cowardly fear of danger which the *guilty* only feel from the *consciousness* of their own transgressions: and

Whereas Colonel William J. Nagle, a native of New York State, and Colonel J. Warren, a native of Massachusetts, both gallant soldiers of the Union army during our late domestic struggle, have been arrested without the slightest overt act on their part, while on a visit to their relatives in their fatherland, for no other offence by them than expressing here, on their native soil, a sympathy for the down-trodden countrymen of their parents; and

Whereas the noble act of Commodore Ingraham, in demanding of Austria the instant release of Koszta, an adopted citizen of America, met the hearty approval of our individual

nation, and the case of Colonel Nagle and Colonel Warren being entitled to no less a consideration because of their being natives of the United States: Therefore, be it

Resolved, That steps be taken to effect their immediate release, considering the violation of international law in their case a just and proper cause for demanding indemnification and retribution; be it therefore

Resolved, That our corresponding secretary be directed to address the Hon. William H. Seward on behalf of this organization, and in favor of our fellow-countrymen, whom we believe are not amenable to British law by any overt act, nor by any connection with Fenian movements in Ireland, and urge the honorable Secretary to make a speedy and resolute demand for their immediate release.

Resolved, That a petition be prepared and circulated for signatures by our fellow-citizens, under the patronage of our organization.

DANIEL B. NORTHRUP, *President*.

H. J. BANCKER,
HENRY LIEBENAU,
Secretaries.

The petition was accordingly draughted and approved of by the special committee, Messrs. Northrup, Lyons, Holden, Schoonmaker, and Liebenau, and distributed for signatures of our fellow-citizens, and the following letter addressed to the Secretary of State:

NO. 4 HAMILTON PLACE, NEW YORK, July 18, 1867.

SIR: I have been directed by the "Constitutional Union Association," in special meeting assembled, to address you in behalf of the liberation of Colonel William J. Nagle, a native of our State, and Colonel J. Warren, a native of Massachusetts, who are now incarcerated in Kilmainham prison, Dublin, without having committed any overt act to justify or palliate such an unwarrantable act of oppression, and in direct violation of that comity of nations so essential to the harmonious and friendly understanding of a Christian people.

With one of these gentlemen I have the honor of a personal acquaintance, and it gives me pleasure to state that I have always known him as a highly honorable and law-abiding citizen, whom I am confident would not render himself amenable to any violation of British law.

You are, I believe, personally acquainted with the family of Colonel Nagle, and therefore it will be superfluous to dwell upon their character and conduct, except so far as to remind you that *five* of the brothers rendered essential service in the Union army during our late rebellion, and *three* of whom were killed in service. Colonel Warren, the travelling companion of Nagle, I have not the pleasure of knowing personally, but he is very highly spoken of by those who are familiar with his general reputation.

As American citizens, they are entitled to the protection of our government, while the services they have both rendered in the army of our Union claim, as I am convinced they will receive from you, the earnest and decisive action of the government they have so faithfully served in its hour of peril.

Permit me, in behalf of the organization I have the honor of representing, to respectfully urge your immediate intercession in behalf of the speedy release of the aforesaid Colonels Nagle and Warren.

I have the honor to be, very respectfully, your obedient and humble servant,

HENRY LIEBENAU,
Corresponding Secretary C. U. A.

Hon. WILLIAM H. SEWARD.

On the 23d July we forwarded to the honorable Secretary of State a special copy of the petition, with the names of the members of this association attached thereto, accompanied by a letter in which we earnestly entreated a prompt and energetic action on the part of our minister, Mr. Adams, to which I received the following reply:

DEPARTMENT OF STATE, Washington, August 7, 1867.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d ult., and of the petition which accompanied it, in regard to the cases of Colonel William J. Nagle and Colonel J. Warren, who are reported to be held under arrest in Ireland on charges of connection with Fenian movements.

In reply, I have to inform you that Colonel Nagle's case had already been made the subject of a proper instruction to Mr. Adams, and that a copy of your communication has been transmitted to him with renewed instructions.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HENRY LIEBENAU, Esq., *Corresponding Secretary C. U. G. C.,*
No. 4 Hamilton Place, West Fifty-first street, New York.

On the 9th of August I prepared a special petition for the signature of the members of the "State Constitutional Convention," then in session at Albany, and forwarded the same to the Hon. Richard L. Larremore, and solicited his valuable aid in procuring the signa-

tures of that important and influential body, believing them to be the most powerful combination of influence with which to operate in behalf of government intervention; and the prompt response given our solicitations by Mr. Larremore deserves an acknowledgment from this body.

The following is a copy of the letter I addressed to him in your behalf:

NO. 4 HAMILTON PLACE, WEST FIFTY-FIRST STREET,
New York, August 9, 1867.

MY DEAR SIR: As the representative of my district in the Constitutional Convention of this State, permit me most respectfully to submit the memorial in favor of the liberation of Colonels Nagle and Warren to your special charge, and soliciting your influence in behalf of obtaining the signatures of the members of your convention in their individual capacity. I beg leave to assure you there never was a case mere entitled to a favorable consideration of your enlightened and patriotic body. I know the statements in the memorial to be correct, and having no other motive or incentive to action in this matter, but that friendly feeling which should be evinced on all occasions, in behalf of those who have faithfully contributed to the preservation of our Union, during its hour of peril, by their active loyalty in the field, I earnestly entreat you to exercise your influence for the relief of these meritorious men, who are unjustly suffering from the effect of the suspension of the habeas corpus in Ireland, and who being citizens naturally look to their government for that protection which governments are instituted to secure, and which has been successfully exercised in behalf of our adopted citizens, Koszta and others.

Your very obedient servant, &c.,

HENRY LIEBENAU,
Corresponding Secretary C. U. A.

HON. RICHARD L. LARREMORE,
Constitutional Convention, Albany.

On the 17th of August, scarcely eight days, the petition was returned through our worthy president, with the name of every member then present in the convention, thus evincing the faithful attention given the subject by Mr. Larremore.

On the 21st of August I enclosed the petition in the following to his Excellency Andrew Johnson:

NEW YORK CITY, No. 4 HAMILTON PLACE.
August 21, 1867.

MR. PRESIDENT: I have the honor, in behalf of the Constitutional Union Association, to present for your consideration the accompanying petition in favor of government intervention for the immediate release of Colonel William J. Nagle and Colonel J. Warren, both citizens of the United States, and now incarcerated in Kilmainham prison, Dublin, Ireland. These gentlemen having committed no overt act, now appeal to their government for protection from that tyranny and persecution which England seems determined to exercise over all of Irish descent, no matter where born. Nagle and Warren have both gallantly contributed to the preservation of our Union during the hour of our danger, by actual service in the field. Colonel Nagle, with his four brothers, entered the Union service at the opening of the war, and at its close *two only* returned to their decimated home; three out of the five sealed their loyalty with their lives. It cannot be that the government of their native land will neglect to intercede, when they have, with bravery and devotion to the Union, shown themselves so worthy of government intervention.

Permit me to call your Excellency's attention to the strength of the accompanying memorial, combining the collective talents of this Empire State, congregated now at Albany, and exhibiting the most unqualified evidence of the patriotic spirit of resistance to foreign oppression which pervades our State, and the universal determination among our people to protect the rights of our citizens abroad.

Allow me most respectfully to urge an early and energetic intervention through our minister at the court of St. James.

I have the honor to be your Excellency's sincere friend and servant,

HENRY LIEBENAU,
Corresponding Secretary C. U. A.

His Excellency ANDREW JOHNSON,
Executive Mansion, Washington, D. C.

Between the 18th of July and the 18th of August, petitions signed by our most respectable citizens from all parts of the State were forwarded almost daily; among them one from the mayor and officials of this city; one from the mayor and officials of Brooklyn; also, from various towns and cities in this State; and on the 4th of September, a very large package of them was forwarded to the President by express, accompanied by the following letter asking for information relative to statements which appeared in the Tribune of August 31, purporting to be by telegraph to that paper, and dated New York, August 16, 1867, one full month after we had initiated the subject; and in Mr. Seward's reply, he distinctly

states, "The subject has *already* received the attention of this department." With your permission I will quote that letter in full, as it anticipates the release of Colonels Nagle and Warren, on action taken before the communication to the President was made. Our first action, it will be remembered, was taken on the 15th of July; and my first communication to Mr. Seward, on the 18th of July. I will now quote Mr. Seward's answer to the communication in question, dated the 16th of August. He says:

SIR: The letter which you addressed to the President on the 16th of August, relating to the case of Colonel John Warren, late of the United States army, who has been arrested together with William J. Nagle, and with him detained in Dublin, under the suspension of the *habeas corpus* act, has been referred to this department, *which understands* that those persons are citizens of the United States, and that there is no sufficient grounds to charge them with the commission of any offence against the laws of Great Britain, and has good reason to believe that they have already been, or will without further delay be discharged.

I have the honor to be, sir, your obedient servant,

WM. H. SEWARD.

When informed of this correspondence, which was on the 31st August, I immediately addressed a letter of inquiry to the President, and one also to his able Secretary, of which the following are copies:

No. 4 HAMILTON PLACE, NEW YORK, *September 3, 1867.*

MR. PRESIDENT: On the 21st of August last I forwarded to your Excellency a petition, signed by the members of the constitutional convention of this State, now in session at Albany, asking intervention in behalf of Colonels Nagle and Warren. This document embraces the collective talent of our Empire State, and of such importance as to lead me to hope for the most favorable results.

With this you will also receive a package of petitions from various parts of the State. If any political benefit is to result from this movement, which seems to be a very popular one among a large portion of our adopted citizens, I desire that your Excellency's promptness in at once forwarding instructions to Mr. Adams should receive all the benefit resulting therefrom, as the organization I have the honor to represent are actuated by patriotic emotions only. Without desiring to interfere with the political aspirations of any, I am convinced your Excellency's administration is entitled to the merit of effecting the speedy release of the citizens referred to.

I have the honor to be, very respectfully, your humble servant,

HENRY LIEBENAU,

Corresponding Secretary C. U. A.

His Excellency ANDREW JOHNSON,

Executive Mansion, Washington, D. C.

No. 4 HAMILTON PLACE, NEW YORK, *September 8, 1867.*

MR. SECRETARY: On or about the 21st of August I forwarded to the President a petition in favor of national intervention for the release of Colonels Nagle and Warren, signed by the delegates in our present "State constitutional convention," now in session at Albany, which I presume was at once transmitted from the Executive to your department. Will you be kind enough to inform me what disposition has been made of it. Since which, and several days after forwarding the petition from the State convention, an announcement appeared in the Tribune of this city, purporting to be the substance of a telegram from Washington, stating that the subject of "the release of Nagle and Warren had been brought before the cabinet, and also that the British minister had telegraphed to his government on the subject, and that the release of the parties in question had no doubt been effected by this time." Will you be kind enough to inform me if that is really so? Has the matter been laid before the cabinet for their consideration and action; and if so, by whose influence was it done? Also, if the British minister did telegraph for their liberation, to whom are we indebted for so active and energetic an effort? Our Constitutional Union Association acting from the purest patriotic motives, with no other desire than to secure for our citizens proper protection abroad, and anxious for a speedy release of our fellow-citizens, we sought only to urge a prompt and energetic action on the part of our minister at the court of St. James. If not inconsistent with the usages and practices of cabinet transactions, please send the required information at your earliest convenience.

Most truly and sincerely, your friend and humble servant,

HENRY LIEBENAU,

Corresponding Secretary C. U. A.

Hon. WILLIAM H. SEWARD,

Secretary of State, Washington, D. C.

To which the honorable Secretary made the following reply, and in which you will perceive he is entirely silent on the subject of a reference to the cabinet, and as to the telegraphing by the late British minister, indicating very clearly thereby that the President and himself were the only active parties, connected with the government, engaged in the release of those prisoners, as Mr. Seward's answer here following shows they were not then released, and asks of *us* the production of the evidence necessary for their release, notwithstanding the late Mr. Bruce's telegraphic despatch:

DEPARTMENT OF STATE,
Washington, September 12, 1867.

SIR: The President directs me to acknowledge the receipt of your letters of the respective dates, the 21st ultimo and the 3d instant, transmitting numerous and respectably signed petitions on behalf of Colonel William J. Nagle and Colonel J. Warren, who are held in custody in Ireland upon charges of complicity in organizations hostile to Great Britain. The President requests me to inform you, in reply, that this department has been making strenuous efforts on behalf of Colonels Nagle and Warren, which will be continued. It is important in the cases of naturalized citizens that documentary proof should be furnished of the fact of naturalization, and some embarrassment has been experienced in Colonel Warren's case from discrepancies of statement on this subject. In your letter of 23d July last you state that he is a native of Boston, while in his own memorial to the Irish authorities he avers that he is a native of Ireland, but that he has been naturalized. You will appreciate the importance of a correction of this discrepancy, and of procuring for the use of Mr. Adams the proof of naturalization.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HENRY LIEBENAU, Esq.,
*Corresponding Secretary of the Constitutional Union Association,
No. 4 Hamilton Place, West Fifty-first street, New York.*

P. S.—Your letter of the 8th instant, addressed to myself, has been received, to which the above may be considered a reply.

This letter communicated to me for the first time the information that Colonel Warren was an adopted citizen, and we (the special committee) immediately set about obtaining all the necessary proofs that the cases seemed to demand, through Colonel Kelly, who telegraphed to Boston immediately for the required evidence of naturalization papers, while we here obtained from the father and mother of Nagle their affidavit of his having been born in Utica, State of New York; these were immediately certified to by William C. Conner, esq., county clerk, also by the British consul of this city, and forwarded without delay to Hon. William H. Seward, with the following letter:

NO. 4 HAMILTON PLACE, NEW YORK, *September 23, 1867.*

HONORABLE SIR: I enclose with this an affidavit from Mr. and Mrs. Nagle, the parents of Colonel William J. Nagle, showing him to be a native of this State, and hope by the next mail to be able to place in your hands the naturalization papers of Colonel Warren; he was naturalized, as I now learn, in Boston, whither I have sent for properly authenticated papers.

I regret that from an error in representation, I should have created a discrepancy in relation to Colonel Warren, and I can assure you, like myself, the organization I represent will continue as earnest in their efforts for the release of our adopted citizens as they are for the liberation of natives, when unjustly arrested and held by any of the despotic governments of Europe. Thanking you kindly for the prompt and earnest action in this matter by the President and yourself, please accept my sincere regards, together with the assurance of a faithful report to the Constitutional Union Association, at their next meeting, of the alacrity with which their communications have been responded to, both by the President and yourself.

I have the honor to be, very truly, your friend and servant,

HENRY LIEBENAU,
Corresponding Secretary C. U. A.

Hon. WILLIAM H. SEWARD, *Washington, D. C.*

The following is his reply:

DEPARTMENT OF STATE,
Washington, September 24, 1867.

SIR: Your letter of yesterday with the accompanying affidavit of Mr. and Mrs. Nagle has been received. In reply, I have to inform you that the subject still continues to engage the attention of this department.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HENRY LIEBENAU, Esq.,
Hamilton Place, West Fifty-first street, New York.

On the 25th of September I received a copy of a letter to Colonel Kelly, from Charles F. Donnelly, esq., at Boston, of which the following is a copy :

19 COURT STREET, BOSTON, September 24, 1867.

MY DEAR SIR: I mailed September 3, 1867, a certified copy of Colonel Warren's record of naturalization to Mr. West, United States consul of Dublin, at the request of Colonel Warren.

Colonel W. took out his first papers in the autumn of 1866, in the superior court of Boston. The copy of the record mailed bore the certificate of the clerk of the court and the seal of the court.

Yours, truly,

CHARLES F. DONNELLY.

MR. JAMES MANNING.

A copy of the foregoing letter I forwarded by mail to the Secretary, and trust by this time our humble efforts, with the blessings of God, have been instrumental in aiding to release our fellow-citizens once more to return to their free and happy homes, where they can enjoy that freedom of thought and expression of opinion which their dear-bought experience has taught them cannot be enjoyed under the rule of British authority.

Respectfully submitted:

HENRY LIEBENAU,
Corresponding Secretary C. U. A.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled :

Your petitioner most respectfully submits to your attention the following statement :

I am a citizen of the United States, born in the State of New York, in which State I have always resided.

At the outbreak of the late war, in April, 1861, I entered the Union army as a private, and advanced to the command of a regiment, and was honorably discharged from the service.

Affairs of a private nature brought me to Ireland. Immediately after my landing, on the 1st day of June, 1867, I was arrested about mid-day, on a public and frequented highway, by a constable and two policemen, not having done any wrong or committed any crime, and was confined in Bridewell at Youghall, county of Cork, for three days. When arrested, I demanded the authority and cause, and protested against the wrong done me. From Youghall I was conveyed to Cork, handcuffed and guarded, and placed in the county prison, without any cause being assigned for my arrest, until the 11th June, when I was committed on suspicion of being connected with the so-called Fenian conspiracy, under a warrant issued by the lord lieutenant of Ireland. On the 12th June, I was taken to Waterford, handcuffed and guarded, and marched through the streets of that city, filled with an excited multitude of people, to the imminent risk of my life. The following day, in company with a large number of prisoners, I was brought, handcuffed and guarded, to Dublin, and placed in Kilmainham jail, where I have since remained in close and solitary confinement.

Immediately after my arrest, through my attorney, I demanded my liberty, or that good cause should be shown for my arrest and imprisonment, and that I should be brought to trial on any charge preferred against me. My application was denied. The government of the United States, through its minister at London, made two applications for my release or immediate trial, (one in July, the other in August,) but, so far as I am informed, no satisfactory answer was given to either.

After four months of close and solitary confinement, subject to the same rigorous rules, humiliations, and privations inflicted upon thieves and vagabonds, without any charge or evidence of crime being found against me; after repeated and persistent demands for liberty and justice, I was brought before a magistrate on the 10th of October, and committed for trial, on the evidence of an informer named Daniel J. Buckley, who, in his sworn statement, acknowledges himself a perjurer. On the 25th of October a bill of indictment for treason-felony was found against me, and my trial set down for the commission of oyer and terminer, then in session. In the first week of the commission I requested, through my counsel, that my case might be heard without delay. The attorney general, in reply, said I should be brought to trial immediately after the prisoner (Warren) then in the dock. After a session of three weeks, the court adjourned on the 16th November, refusing the motion of my counsel asking for my immediate trial, or that I should be released on bail, putting off my case to the Sligo county assizes in March next, on the plea that, being an alien, I could not be tried in the county of Dublin for acts alleged against me. The Crown officers and government authorities were fully acquainted with the fact of my being an American citizen before they commenced these proceedings; they had ample time, and made every effort, using the most iniquitous means to procure evidence and make up a case against me.

I have already suffered six months' imprisonment, deprived of all social intercourse, sub-

ject to the annoyance and espionage of officials, refused all means of mental enjoyment, books, pen, ink, or paper, except under the surveillance of the prison authorities, my health seriously impaired, (as reported by the attending physician,) and more than all, my rights as an American citizen outraged. After preparing for my trial, and the United States minister having furnished me with attorney and counsel for my defence; after bringing to trial two other *American citizens (denying their rights, however, as such, and convicting and passing sentence upon them as British subjects)* upon the very same evidence which is brought against me, I am refused the advantage of even this tardy appearance of justice: and because my character as an American citizen is recognized, I am to suffer *ten months* or more of this horrible confinement within a British dungeon before I am allowed the privilege of defending myself against the made-up purchased testimony of perjurers and informers. Since my arrest two commissions have been held in this city, and the assizes held in every county in Ireland; yet I am refused a trial. In the mean time, men suffering in this jail all the hardships and privations of their position, are being constantly insulted and annoyed by the efforts of officials, who seek by offers of liberty, money, and position, or by threats of conviction and long and severe imprisonment, to induce them to swear away the lives of their fellow-men. This is no exaggeration, but a statement of facts which have become notorious.

According to the rule of law announced by the lord chief baron in his charge to the grand jury which indicted me, I am to be held *responsible to the British government* for my words and acts *within the United States*; and on the unsupported evidence of the perjured and degraded wretch Corydon, I am to be treated as an accomplice in the acts of the 5th of March, committed by parties to me unknown, and at a time when I was in New York.

No overt act has been or can be brought against me. I challenge proof of any crime, or infringement of any law, which can justify this gross violation of my liberty, and call upon the officers of the Crown either to restore me to freedom, or, in the face of the world and in mockery of justice, sentence me to a convict prison upon the unblushingly purchased and perjured evidence upon which they procured my indictment. Having refused to restore my liberty, and not daring to proceed to the consummation of their purpose, but persisting in holding me a close prisoner for an indefinite period, I now ask the government of my country to extend to me that protection due to every one of her citizens. I claim no special rights as a native, but demand only the assistance which it is the duty of the government to extend to all its citizens, that I may be released from the oppression and delivered from the dungeon of a foreign power, against whose aggression and tyranny I invoke the aid of my country.

To you, the honored representatives of the people, the trusted guardians of the nation's honor, I appeal, in the name of liberty and justice, against the grievous wrong inflicted upon me and other citizens of the republic; against the further continuance of a system of unjustifiable persecution of American citizens only because they are Americans. Denying the right of this or any other foreign government to arrest and imprison our citizens upon the mere suspicion of the first policeman they meet, holding and subjecting them to solitary confinement and the treatment of felons, I ask my immediate release.

Before the world and Almighty God I solemnly declare that I have committed no act within British territory that should render me amenable to British law or subject me to the punishment I have already suffered. I demand that freedom, which is my inalienable right, and pray that your honorable body may adopt such measures as you may deem proper to relieve me from my present position, and compel the British government to respect the rights and liberties of American citizens.

And your petitioner will ever pray.

WILLIAM J. NAGLE.

KILMAINHAM JAIL, DUBLIN, IRELAND,
November 25, 1867.

At a regular meeting of the Constitutional Union General Committee of the city of New York, held at Masonic Hall on Friday, December 6, 1867, the foregoing petition was read, and Messrs. Henry Liebenau, O. Sloan Holden, and George Merritt were appointed a committee to circulate the following petition for signatures, and the power given them to add an equal number of influential citizens to their body, to proceed to Washington and present the same to Congress.

DANIEL B. NORTHRUP,
President.

H. S. BANCKER,
WILLIAM ABBOTT,
Secretaries

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled :

The undersigned citizens respectfully present for your earnest consideration and energetic action the outrage committed on American citizens by the British government, in repudiating the right of our government to naturalize subjects of Great Britain, and ignoring entirely the plea of citizenship in her courts of justice, in contemptuously refusing to American citizens

the equitable rule established by her own laws of granting to aliens on trial a jury of one-half aliens, as in the case of Colonel Warren, an adopted citizen, and the presumptuous claim set up in the case of Colonel William J. Nagle, a native of New York State, who has been arrested and imprisoned without the commission of a single overt act to justify it, but arrogantly claiming the right to hold him accountable to British law for acts done and opinions expressed in this his native country.

We would respectfully call your attention to the fact that the outrage here complained of is more aggravating than the "right of search" which brought on the war of 1812, and renders our naturalization laws a fraud, adding insult to the injury she inflicted on us during our domestic difficulty by her pirates, fitted out in her ports, fully armed and equipped, and preying upon our commerce.

We respectfully ask of your honorable body that our minister at the court of St. James be directed to demand the immediate release of our citizens not guilty of any overt act in England, and the full settlement of our claims for the Alabama piracies; or, in the event of a refusal, that Mr. Adams be directed to demand his passports and return home, upon which emergency we earnestly invoke Congress to pass an act authorizing reprisals, and that the natural right of expatriation, as well as our right to naturalize her subjects, be enforced by all the power of our nation.

And your petitioners will ever pray.

Mr. Gibbons to the President.

PHILADELPHIA, December 28, 1867.

DEAR SIR: The enclosed facts afford your Excellency a good opportunity of following up the work you have so gloriously begun in favor of American citizenship abroad. The opportunity offered is too good to lose.

I am, dear sir, your most obedient servant,

JAMES GIBBONS.

His Excellency ANDREW JOHNSON,
President United States.

[Indorsement.]

The attention of the Secretary of State is called to the within scrap.

ANDREW JOHNSON.

[From our own correspondent.]

THE IRISH-AMERICAN.

DUBLIN, December 7, 1867.

The Irish-American "suspects" in Kilmainham are having a hard time of it. Many of the gallant fellows are wretchedly off for shoes and clothing, and the severe frosty weather which we are now getting pierces them to the very bone. When out for exercise in the prison yard a few days ago an extraordinary scene took place. Their exercise consists in marching in couples, with four paces distant between each pair, in solemn silence, and with their hands hanging by their sides. On the day to which I refer, the air being very sharp, the men put their hands in their pockets. The warders instantly ordered them out. The men refused to obey. The governor was called in; he remonstrated, said the regulations should be carried out, threatened them with punishment, and ordered them to remove their hands at once. The men said they were perishing with cold, and would not do it. Then the military on duty in the jail were called in and drawn up with bayonets fixed in front of the prisoners. General Nagle then stepped from the ranks of the latter, said the proceeding was a shameful one to be adopted towards untried prisoners, who should not be subjected to the treatment of convicts, and concluded by saying, "You may bayonet us if you like; you can do so, for we are defenceless, but you will get no submission from us." His words were echoed by his fellow-prisoners, and the scene was terminated by the whole party being marched off to their cells and put under punishment, a part of which consists in their being deprived of the meat rations which they used to receive on two days in the week. Such is the treatment given to citizens of the United States while untried, and before some of them have even been charged with any offence in British prisons. Will America say or do nothing for these sons of hers who are suffering such cruel persecution?

Mr. Nagle to Mr. Seward.

NO. 9 WYCKOFF STREET, BROOKLYN,
December 30, 1867.

SIR: I respectfully and earnestly call your attention to the enclosed communication which I received from my son's counsel, Solicitor J. T. Scallan, Dublin, Ireland.

From your known character of purpose, independence, and patriotism, I am confident you will at once instruct our minister at London, Mr. Adams, to authorize Solicitor Scallan, and his associate attorney, to attend to my son's, Colonel Nagle's, trial at the Sligo assizes.

I remain, very truly, your obedient servant,

D. M. NAGLE.

Hon. WILLIAM H. SEWARD,
Secretary of State.

Mr. Scallan to Mr. West.

CHAMBERS, 10 FLEET STREET,
December 6, 1867.

The Queen *vs.* Colonel Nagle.

SIR: Now that the British government have obtained an order for his removal to Sligo, that he may be tried there, Colonel Nagle has requested me to inquire, in order to prevent the possibility of a mistake or misapprehension on his part, do your present instructions relative to his case extend to providing, as I take it they do, for his defence at Sligo; and am I to consider myself accordingly as instructed by the United States government to take all steps necessary for the proper conduct of such defence? It is right I should mention that, in my opinion, it will be indispensable to bring down a *special bar*—namely, the gentlemen who appeared on Colonel Nagle's behalf at the recent commission, in Green street, and who are fully conversant with the merits of the case.

An early reply I will esteem a favor, as it may become necessary for me to communicate on the subject with Mr. Adams, and, perhaps, with Mr. Seward direct.

I am, sir, your obedient servant,

JOHN T. SCALLAN.

WILLIAM B. WEST, Esq.,
United States Consul at Dublin.

Mr. West to Mr. Scallan.

CONSULATE OF THE UNITED STATES OF AMERICA,
Dublin, December 7, 1867.

SIR: I have to acknowledge the receipt of your letter of the 6th instant, relative to Mr. Nagle's trial, and to inform you in reply that I have forwarded a copy thereof to Mr. Adams, and asked his instructions thereon. Until I receive them, I am not in a position to answer your questions.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

JOHN T. SCALLAN, Esq.,
Solicitor, Fleet street.

Mr. West to Mr. Scallan.

DUBLIN, *December 10, 1867.*

SIR : Referring to my letter of the 7th instant, I have now to inform you that I have received a reply to my communication to Mr. Adams, in which he states that, as there appears to be sufficient time to receive an answer from Washington, he will refer the subject of your letter to the government for its action thereon.

I have to add, that if you have any suggestions to make, which your letter seems to intimate, it is desirable that I should receive them, on Mr. Adams's behalf, for transmission to him, to enable him to judge of the propriety of their passing through him.

I am, sir, your obedient servant,

WILLIAM B. WEST, *Consul.*

JOHN T. SCALLAN, Esq.,
Solicitor, Fleet street.

Mr. Scallan to Mr. West.

CHAMBERS, 10 FLEET STREET, DUBLIN,
December 12, 1867.

The Queen *vs.* Colonel Nagle.

SIR : In reply to your letter of the 10th instant, I beg to say that, beyond what I have already suggested as to the necessity of retaining a *special bar* for the defence of Colonel Nagle, I have at present no suggestion to offer Mr. Adams on the subject of this case.

But I may state that, as the assizes will likely be held in February, it will be indispensable that I have definitive instructions from the United States government by this day month at the furthest.

I beg to acknowledge, also, the receipt of your letter of yesterday's date, acquainting me that you had received a despatch from the State Department to the effect that the evidence of the citizenship of Colonel Nagle would be soon forwarded to you.

I am, sir, your obedient servant,

JOHN T. SCALLAN.

W. B. WEST, Esq., *Consul.*

Mr. Seward to Mr. Collins.

DEPARTMENT OF STATE,
Washington, January 2, 1868.

SIR : The President directs me to acknowledge the receipt of your letter of the 7th ultimo, forwarding a copy of preamble and resolutions adopted by a meeting held at Faneuil Hall on that date, in relation to the treatment of naturalized citizens of the United States in Great Britain, charged with complicity in Fenian movements or conspiracies, and to inform you that the matter is receiving the most assiduous attention on the part of the executive branch of the government, which is preparing as rapidly as practicable a report of the correspondence which has taken place on the subject, to be transmitted to Congress.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

P. A. COLLINS, Esq.,
Boston, Massachusetts.

Mr. Boutwell to Mr. Seward.

HOUSE OF REPRESENTATIVES,

Washington, January 7, 1868.

SIR: At a request of a portion of my constituents, I enclose herewith the report of the proceedings of a public meeting, held in the town of Marlborough, Mass., relative to the imprisonment of American citizens abroad.

The last resolution indicates a desire that the paper may be laid before the President, and I transmit it to you for that purpose.

I am your obedient servant,

GEORGE S. BOUTWELL.

Hon. WILLIAM H. SEWARD,

Secretary of State, &c., &c.

Whereas the government of Great Britain has unlawfully seized on the persons of American citizens who happened to be sojourning within the limits of that kingdom, and having for months detained them in prison, has banished or expelled some of them from the said kingdom without assigning cause for such arbitrary arrest and illegal imprisonment, while in other instances the said government has tried and condemned others as British subjects, for words spoken within the jurisdiction of the United States, thus disregarding their American citizenship, and, in the case of Colonel John Warren and others, refusing the privilege of trial by a mixed jury, a privilege which the laws of Great Britain accord to every prisoner admitted to be a citizen of an alien power; and whereas the government of Great Britain has thus repeated its ancient doctrine, "once a subject, always a subject," and, in pursuance of that doctrine, the said government has disregarded and denied the validity of the naturalization laws of the United States; and whereas the application of that doctrine has recently deprived one American citizen of his life, and many others of their liberties, and tends to make insecure in their rights many millions of our fellow-citizens who have accepted (in good faith) the obligations of citizens as conferred upon them by the naturalization laws of the United States: Therefore be it

Resolved, That the time has come when it is no longer just or creditable to the United States of America to allow any foreign power to exact allegiance from any citizen of this republic, whether native or adopted citizens, and that we do now respectfully petition Congress to take prompt action in defining the laws upon this subject, and if necessary to enact such laws as will give the citizens of this republic the fullest legal protection while travelling in foreign countries; and

Resolved, That as citizens of the United States we call upon the Executive and Congress to make an immediate demand on the government of Great Britain for the release of all American citizens illegally tried and convicted as British subjects who may still be held in prison by that power, and to demand of the said government ample reparation for all injuries thus sustained by citizens of the United States; and

Resolved, That it is the duty of our government to inquire into the conduct or action of its minister to England with regard to the illegal trial and conviction of American citizens in that country; and

Resolved, That copies of these resolutions signed by the officers of this meeting be forwarded (through our representative,) to the President, President of the Senate, and to the Speaker of the House of Representatives of the United States.

LEVI BIGELOW, *President.*

EDWARD A. GAY, *First Vice President.*

JOHN O'CONNELL, *Second Vice President.*

JOHN CONNEALY, *Secretary.*

Mr. O'Neill to Mr. Seward.

MILWAUKEE, *January 7, 1868.*

SIR: I am instructed to forward to you a copy of the enclosed resolutions, which were unanimously adopted by the people of Milwaukee at a meeting held at City Hall, on the evening of December 22, A. D. 1867.

I have the honor to be your obedient servant,

EDWARD O'NEILL, *Chairman.*

His Excellency WILLIAM H. SEWARD,

Secretary of State.

Resolutions passed in the city of Milwaukee, in public meeting, December 22, 1867.

MILWAUKEE, December 22, 1867.

Resolved, That it is the duty of the United States to declare especially the rights and duties of citizens temporarily sojourning in foreign countries, and thereafter to regard any intentional violation of such rights by foreign powers *as cause of war*.

Resolved, That expatriation is one of the inalienable rights of man, and from the time when any foreign citizen or subject voluntarily renounces his former allegiance, and becomes domiciled in this country, with the intention in good faith to become a citizen of the United States, he should be regarded during the continuance of such domicile as invested with our national character, and entitled to the protection of our government.

Resolved, That no distinction should be tolerated between native-born and naturalized citizens of the United States in regard to immunities and privileges in foreign countries; that a naturalized citizen of the United States temporarily sojourning in the dominions of his former sovereign can only be compelled to enter the military service, or otherwise support the government of such former sovereign, to the same extent, and under the same circumstances, as might be required of a native-born American citizen thus found in such foreign country.

Resolved, That copies of these resolutions, signed by the president and secretaries of this meeting, be transmitted to the President of the United States, to the Secretary of State, and to each of our senators and representatives in Congress.

EDWARD O'NEIL,
President.
JEREMIAH QUIN,
Secretary.

Hon MATTHEW H. CARPENTER,
Chairman of Committee on Resolutions.

Mr. Lyons to Mr. Seward.

755 BROADWAY, NEW YORK,
January 8, 1868.

SIR: I have the honor to forward you the accompanying report and resolutions adopted this day at a meeting of the Knights of St. Patrick. I respectfully request your earnest attention to the subject-matter, as therein set forth, as I am instructed to do by a vote of the society.

Your obedient servant,

W. F. LYONS,
President Knights of St. Patrick.

Hon. WILLIAM H. SEWARD,
Secretary of State.

Whereas it has now been sufficiently ascertained, and duly notified to the President and both houses of Congress of the United States, that certain American citizens are at this moment confined in British prisons without trial, and in some instances without even any charge of having violated the law of that country; and

Whereas certain other citizens have been arraigned before British courts, convicted, and sentenced to penal servitude for words spoken or written in their own country—the United States—no other act or offence having been even imputed to them; and

Whereas large numbers of American citizens, after an imprisonment of many months, undergoing the treatment of common convicts, without being accused of any crime, were discharged on condition of quitting the British dominions, and were guarded to their ships by police constables; and

Whereas certain others, being accused of crime, were tried and convicted before juries of British subjects, and were denied the privilege of being tried as aliens, according to the established custom of British courts, on the express ground, as decided by British judges, that they were not aliens but English subjects; and

Whereas many of our fellow-citizens, belonging to all these classes of cases, are now actually undergoing the most rigorous imprisonment which is reserved to convicted felons: Be it therefore

Resolved, That American citizens ought to be free to travel unmolested in foreign countries

so long as they violate no law of those countries, and that it is the duty of their government to protect them in that right.

Resolved, That the United States are outside of the jurisdiction of British courts, and that, under the laws of nations, no act or word done or uttered in the United States can be punished in England by English laws.

Resolved, That American citizens, whether native or adopted, are not British subjects, and, if accused of crime in Great Britain or Ireland, have a right to be tried as aliens, and not as Englishmen, by the species of jury provided for aliens.

Resolved, That there is no need of any fresh legislation or declarations of Congress, the naturalization law now subsisting being quite sufficient to settle the law of the United States; that the government of the said United States, having naturalized under that law many millions of citizens, first requiring them solemnly to abjure all allegiance to any other power, has thereby taken upon itself the obligation to protect the citizens thus adopted, as well as all other citizens, and that this obligation is now complete without any new law.

Resolved, That the President of the United States having declared in his last message to Congress that there is a "conflict of laws" between England and the United States, the former asserting the right to hold in perpetual subjection those born in the British dominions, and the latter affirming the right to release foreign immigrants from all foreign allegiance and confer upon them the character and rights of American citizens, in such conflict of laws it is the American law of liberty which should prevail, and not the feudal law of England.

Resolved, therefore, That we hold it to be the duty of the Executive to demand peremptorily from the British government the release, first, of all American citizens now held in prison not being accused of crime: second, of those convicted and now undergoing punishment for acts done in the United States; and, third, of those who have been tried as British subjects, their claim to be American citizens being expressly disallowed by the judges of British courts; and further, that it is the duty of the Executive to require a new treaty with Great Britain, which shall forever put an end to the pretension of that power to treat as its subjects those persons to whom our government has accorded, or may hereafter accord, the rights of American citizenship.

JOHN MITCHELL,
JOHN McAULIFFE,
MARTIN BROWNE,
MICHL CONNOLLY,
Committee.

W. F. LYONS,
President Knights of St. Patrick.

Mr. Hoffman to Mr. Seward.

MAYOR'S OFFICE, NEW YORK,
January 15, 1868.

SIR: I have the honor to transmit herewith a copy of a message sent by me to the common council in this city in December last, in relation to the rights of naturalized citizens abroad, together with the proceedings of the council in relation to the same.

I beg leave to express the hope that the subject referred to, which affects so deeply the rights and interests of vast numbers of American citizens, may receive from you the consideration and attention to which it is entitled.

I entertain no doubt that the European governments can very easily be brought to recognize our claims; that adopted citizens of the United States of America are entitled everywhere to the same protection and the same rights which are accorded to those who are native born.

I am, with great respect, your obedient servant,

JOHN T. HOFFMAN, *Mayor.*

Hon. WILLIAM H. SEWARD,
Secretary of State.

MESSAGE FROM HIS HONOR THE MAYOR.

IN BOARD OF ALDERMEN, *December 12, 1867.*

A message was received from his honor the mayor relative to the right of naturalized citizens abroad, and recommending action of the common council relative thereto, as follows:

MAYOR'S OFFICE, *New York, November 30, 1867**To the honorable the common council of the city of New York :*

GENTLEMEN: I have received from the honorable Judge Charles P. Daly, of the New York common pleas, and General Charles G. Halpine, register, a communication calling my attention to the proceedings of the two public meetings recently held in this city in reference to the rights of naturalized American citizens abroad, which communication is as follows :

NEW YORK, *November 29, 1867.*

DEAR SIR: The undersigned respectfully call your attention to the enclosed resolutions, adopted at two meetings held in Cooper Institute, in this city—the first called by the surviving officers and men of the Irish brigade and Corcoran legion on last Saturday evening, and the second, a mass meeting of citizens called on Tuesday evening last, to consider the subject of the due protection of the rights of the naturalized citizens of the United States ; and knowing your sympathy with the object of these meetings, we would respectfully suggest the propriety of your officially calling the attention of the boards of common council to the documents herewith enclosed, with a view to calling forth such action as they may see fit to take in the premises.

With very sincere respect, we have the honor to be your very obedient servants,

CHAS. P. DALY,
CHAS. G. HALPINE.

The resolutions referred to in the foregoing communication are also herewith enclosed.

In my judgment the municipal authorities of our city should take decided and emphatic action, representing the sentiments of our people, in vindication of the principle that American citizens are free before the world and owe no duty but to our government.

The assumptions of Great Britain in opposition to this principle, recently so aggressively enforced, present the question in a form demanding that it shall be met by our government and decided now and forever. The principle contended for by the English government makes a man the slave of the soil on which he happens to be born, creating a birth-duty of service and bondage from which he can never free himself.

It is idle at this day to enter on any argument on this question. Our government does not and cannot recognize any such principle. When we accept the abjuration of allegiance to all other powers, and confer the title of citizen, we enter upon an obligation to maintain the condition which we accept, and the authority and protection which we confer. Between the citizen thus created and our government mutual duties are established, which neither can disregard or violate.

The citizen thus adopted becomes bound up in our government. In time of peace he performs all the duties which good government, law, and order require. In time of war he is, equally with all other citizens, called upon to fight for our flag, and maintain our cause with his life, if need be. We receive and enforce the duties which arise from this relation. We have simply to say, and live up to our declaration, that we will perform our obligation and protect our citizens against any and every other power whatsoever ; to declare that citizens of the United States are free and independent, owing no service to any government but our own. Self-preservation, as well as our dignity, our duty, and our honor, require that this shall be firmly and unchangeably asserted by our government.

Suppose in the late war to maintain our national existence, in which our adopted citizens fought with such devotion and valor, Great Britain had openly taken sides against us, and had sent its soldiers to fight under the British flag on the side of revolt for our national destruction, the principle contended for by England would have made every adopted citizen born in any part of England's "dominions," fighting on the side of the Union, a traitor, liable to be ignominiously executed.

Can any stronger illustration be needed to show how clearly national safety, as well as national honor, are involved in this question ? We know not what the future may demand of us so far as foreign governments are concerned ; but it is not difficult to see how this question enters into our very existence as an independent nation. The recent aggressions of Great Britain against adopted citizens, not guilty of any overt act within her territory, visiting that country, have revived this question in the most striking form, and it must be finally decided. The great duty of a State is, to its citizens, to maintain their rights and to protect their persons.

This is a question which affects adopted citizens of every nationality, and which belongs to the whole country and our entire people ; and I am rejoiced to see that our ablest and most influential citizens and jurists are united in demanding immediate and resolute action on the part of our government in vindication of our national duty and dignity.

I trust that your honorable body will appreciate the importance of the issue, and will promptly and unanimately give expression to the undivided sentiments of our citizens, to maintain "the sovereign and independent character of our nation."

JOHN T. HOFFMAN, *Mayor.*

Resolutions introduced by General Denis F. Burke, formerly commanding the Irish brigade of the Army of the Potomac, and unanimously adopted at the mass meeting of Irish soldiers of this city, called by the surviving officers and men of the Irish brigade and Corcoran Legion, held at Cooper Institute, New York city, on the evening of Saturday, 23d day of November, 1867, General James P. McLeor, of the Corcoran Legion, in the chair.

Whereas, according to the Constitution and laws of the United States of America, the adopted citizens thereof are entitled to all the rights and privileges, as well as subject to all the responsibilities, of those who have acquired their citizenship by the mere "accident of birth;" and whereas it is the obvious duty of the American government to protect the lives and liberties of all the citizens of this republic, and to vindicate and enforce, to the fullest extent, their just rights and privileges as such, whenever or wherever violated, at home or abroad, whether by private individuals or by regularly organized governments; and whereas, should any citizen of this country be charged with violating the laws of any foreign country, he is entitled to a trial before a jury composed one-half of citizens or subjects of such foreign country resident therein, and one-half of persons who owe no allegiance to the government of said foreign country; and whereas Colonel John Warren, a citizen of these United States, having been accused of a violation of the laws of Great Britain, has been recently refused that common right by which all American citizens are entitled to be tried by a mixed jury, composed half of British subjects and half of foreigners; and whereas many citizens of the United States, of native as well as foreign birth, have been unjustly and arbitrarily incarcerated in British prisons, where many of them lie still immured without having any specific charge preferred against them; and whereas the government of the United States is bound in duty, in honor, and in gratitude, to take prompt and effective measures for the redress of the manifold wrongs which our fellow-citizens have suffered at the hands of the British authorities: Be it, therefore,

Resolved, That the Irish-born citizen soldiers of this republic are, in a peculiar manner, concerned to press upon Congress and the government the great question of their actual standing as American citizens, raised by the late arrests and criminal trials in Ireland and England. Those Irish-born soldiers have but recently emerged from the horrors and slaughter of a great war in defence of the flag of their adopted country, which flag they did fully believe would give them its protecting shelter against the claims to their allegiance of any power on the face of the earth, except only the United States of America; and

Resolved, That in forswearing all allegiance and obedience to the sovereign of England—as they were required to do by American law before admission to citizenship—the Irish citizen soldiers aforesaid did truly believe that the government which exacted such an oath, and thereupon granted naturalization, bound itself by that act to assert and vindicate, in every place and against every power whatsoever, its right to require such abjuration, and to confer a new citizenship, equal in every respect to that of a native-born American; and

Resolved, That in certain late proceedings of the British government—in the arrest without charge, and long imprisonment without trial, of large numbers of American citizens, and in the refusal to accord to others, when brought to a pretended trial, the privilege of a mixed jury, half foreigners and half British subjects, and in the present imprisonment and penal suffering as convicts of our fellow-citizens thus tried and convicted—we see a distinct and authoritative denial on the part of that government (whose authority we were required to renounce on oath) of the right of the government of the United States to naturalize us, as well as of our right to renounce an allegiance always odious to us; and

Resolved, That as naturalized citizens and soldiers of the United States, held to all the duties, services, and responsibilities of other citizens, which duties and services we have to the best of our abilities discharged, both on the field of battle and in the walks of private life, we, the officers and soldiers of the late Irish brigade, Corcoran Legion, and other military Irish organizations, hold ourselves entitled to request of our government some effectual action, with a view to define our position; and

Resolved, That we respectfully call upon the government of the United States, and especially upon the Secretary of State, to demand of the British government—first, the release of those of our fellow-citizens who have been lingering for months in prison without trial, as well as the prompt release of those who have been unjustly convicted and condemned; second, full reparation for the false imprisonment of those who, after a term of confinement without trial or accusation, were at length released on condition of quitting that country; and, third, a full disclaimer and disavowal of the doctrine lately laid down by the chief baron of the Irish exchequer, that a naturalized citizen of the United States still remains a subject of the Queen of England.

Resolved, That the thanks of this meeting be hereby tendered to the Hon. William E. Robinson, for the prompt and unsolicited action he has taken in bringing this all-important question before the Congress of the United States.

Resolutions introduced and adopted at a mass meeting of the citizens of New York, held at the Cooper Institute, in the city of New York, on Tuesday, the 26th day of November, 1867, of which the Hon. Charles P. Daly, first judge of the court of common pleas in the city of New York, was chairman.

Whereas the government of Great Britain has, in violation of all international comity, and without regard to the forms of law or sufficient justification, seized on the persons of American citizens, both native-born and adopted, who happened to be temporarily sojourning or travelling within the confines of that power, and having for months detained them in prison, without legal accusation or indictment, has expelled some of them from the territory over which the said government exercises jurisdiction in the same ignominious manner as convicted criminals are usually deported; while in other instances the said government has, in defiance of American law, tried and condemned others as British subjects for acts done within the limits of the United States, disregarding their American citizenship, and, as in the case of Colonel John Warren and others, refusing them the privilege of a mixed jury, thus depriving them of a right which British law accords to even the meanest felon who claims to be a citizen of an alien power: and

Whereas no measures adequate to the proper protection of our citizens abroad, or to the vindication of the national dignity in this respect, have yet been taken by the government of the United States: Therefore, be it

Resolved, That the time has arrived when it is no longer consistent with the dignity of this republic, or the rights of its citizens, that any foreign power should be tolerated in claiming or exacting allegiance or service of any kind from those on whom the character of American citizenship has been conferred by the Constitution and laws of the United States; and, as citizens of this country, we call upon Congress and the Executive to demand from the government of Great Britain the immediate and unconditional release of every American citizen so illegally arrested and condemned who may still be held in durance by that power.

Resolved, That, as the Constitution and laws impose on naturalized citizens the same burdens and responsibilities as on those of native birth, they should also receive the same protection from the government to which they have sworn allegiance, and to which alone they owe obedience; and the authorities of the United States should maintain this principle at all hazards, as by it only can the sovereign and independent character of the nation be vindicated.

Resolved, That should the government of Great Britain refuse to make plenary reparation to the United States for the manifold insults offered to this republic in the persons of its citizens, and should that power persist in ignoring the citizenship of those who have been naturalized by American law, and still continue to claim jurisdiction over them as British subjects, the President and Congress should remember that in 1812 their fathers fought to vindicate the right of their country to receive foreign-born immigrants into the great American family, and that from the issue which the infant republic did not hesitate to face, the full-grown nation of to-day should not shrink, when justice and the interests of ten millions of her citizens demand the immediate and definite settlement of a matter on which the faith of the United States is already pledged.

Resolved, That we call upon our fellow-citizens throughout the Union, by the mutual interests which bind us as children, by birth or adoption, of a common country, to assemble in mass meetings in their various localities, and, in the name of the people of the United States, to demand that our representatives at Washington shall not rest until the amplest protection is insured to all our people abroad, and the name of an American citizen is respected throughout the world, as was that of the Roman of old.

Alderman Coman moved that the communication be received and entered at length in the minutes; which was carried.

In connection with the foregoing,

Alderman Loew offered for adoption the following resolutions:

Resolved, That the common council of the city of New York fully indorse the views stated in the message of his honor the mayor in relation to the duties of the United States government toward all citizens, native and adopted.

Resolved, That adopted and native citizens are alike entitled to the protection of the American flag, and that it is the duty of the government to enforce it.

Resolved, That a joint committee of five from each branch of the common council be appointed to act in co-operation with the committee of citizens appointed at the people's meeting in reference to the same subject.

Which were adopted by the following vote:

AFFIRMATIVE.—Aldermen Moore, Coman, Norton, Ward, the President, Aldermen Ely, Hardy, Loew, Coulter, McGinnis, and McQuade.—11.

Alderman Ely moved the proceedings relating to the subject be printed at length in all the papers employed by the corporation; which was carried.

The president subsequently named as the committee on the part of the board of aldermen Aldermen Loew, Ely, Norton, Coman, and McQuade.

IN BOARD OF COMMON COUNCIL,
January 4, 1868.

Councilman Stacom offered the following resolution :

Resolved, That the following named councilmen be, and they are hereby, appointed as the special committee on the part of this board in relation to the rights of naturalized citizens abroad :

Councilmen Culkin, Reilly, Seger, Webber, and Gilmore.

Which was adopted.

Mr. Slade to Mr. Seward.

BRIDGEPORT, CONN., January 20, 1868.

DEAR SIR: I have the honor herewith to transmit to you a copy of the resolutions adopted at a mass-meeting of the citizens of this city on the 17th instant.

Your obedient servant,

L. MYRON SLADE.

Hon. WILLIAM H. SEWARD,
Secretary of State.

At a meeting of the citizens of Bridgeport, held at Washington Hall, in said city, on the 17th day of January, A. D. 1868, Monson Hawley, mayor of said city, presiding, L. Myron Slade, secretary, the following resolutions were unanimously adopted :

Whereas the government of Great Britain, in violation of the principles of international law, and in defiance of the authority of the American government to protect citizens of the United States in all their just rights and privileges, has arrested and imprisoned American citizens who visited her dominions on private business, and sentenced them to penal servitude for alleged offences committed on American soil, denying them the right to be tried by a jury of their peers, as the law provides ; and

Whereas many American citizens, of native as well as foreign birth, have been unjustly incarcerated in British prisons, where many of them still remain, against whom no specific charges have been preferred : Therefore,

Resolved, That the question of American citizenship is an American question, and that when the government of the United States has accepted the allegiance of any person of foreign birth it is its right and its duty to give him protection as such citizen everywhere, and it is not bound to conform to the policy or traditions of any other nation ; and it is the duty of the government of the United States in every case in which the rights of American citizens have been violated, to demand redress, and, if necessary, enforce such demands, and also to demand the release of all American citizens deprived of their liberty in violation of these principles.

Resolved, That we earnestly call upon the representatives and senators of the American people in Congress assembled to take such action as will assure the people that they are citizens of a government which will defend and protect them against all invasions of their rights everywhere, at home or abroad.

Resolved, That it is due to the national honor that a speedy recall be made of all such ministers and other diplomatic agents of the government as have disgraced their offices by permitting the rights of American citizens to be trampled upon in foreign countries without remonstrance or official protest.

Resolved, That American citizens will never admit any claim or pretension of a foreign power that shall in any manner interfere with their freedom and allegiance as American citizens in any part of the world, and if foreign governments shall continue to persistently and practically deny the doctrine herein declared, it will be the imperative duty of the government of the United States to assert and maintain the same at every hazard, at any cost, and by all the means used by civilized countries.

Resolved, That the chairman and secretary of this meeting be requested to transmit a copy of these resolutions to the President, the Secretary of State, and to each of the senators and representatives in Congress from this State.

MONSON HAWLEY, *Chairman.*

L. MYRON SLADE, *Secretary.*

[Received January 23, 1868.]

At a meeting of the citizens of Franklin county, State of New York, held at the courthouse in the town of Malone, to discuss the rights of American citizens, either native or foreign born, when travelling abroad, and their relations with foreign governments, Albert

Hobbs, county judge, presiding, and Eugene Wilber, esq., acting as secretary, the following preamble and resolutions were unanimously adopted:

Whereas the British government, in violation of international usages, and without sufficient cause, has seized the persons of American citizens, native and adopted, confined them for months without legal accusation, expelled some of them from the territory over which it exercises authority, in a manner as disgraceful as the deportation of convicted criminals; while it has tried and condemned others as British subjects, in defiance of American law, for opinions expressed and acts said to have taken place within the limits of the United States regardless of their American citizenship, refusing them the privilege of mixed juries, a right which British law accords to the meanest felon who claims to be a citizen of an alien, power; and

Whereas no proceedings sufficient to shield American citizens abroad, or to vindicate our national honor in this respect, have yet been taken by the government of this country: Therefore be it

Resolved, That the time has come when it is no longer consistent with the dignity of this republic or the rights of its citizens that any foreign power should be tolerated in claiming or exacting allegiance or service from those on whom American citizenship has been conferred by the Constitution and laws of the United States; and, as citizens of this country, we call upon Congress and the Executive to demand of the British government the immediate and unconditional release of all American citizens, illegally arrested and condemned, who may still be held in imprisonment by that power.

Resolved, That, as the Constitution and laws impose the same burdens and responsibilities on naturalized citizens as on those of native birth, they should receive the same protection from the government to which they have sworn allegiance—to which alone they owe obedience; and the authorities of the United States should maintain this principle at all hazards, as only by it can the sovereign and independent character of the nation be vindicated; and

Whereas the brave American officer O'Brien was allowed to be strangled at Manchester, while Charles Francis Adams, the American minister at the court of St. James, was basking in the sunshine of London society, and a blood-thirsty English mob and press were howling for the execution of an innocent man: and

Whereas this martyred American soldier informed Mr. Adams of the unpleasant position in which he was placed, and the contumely heaped upon him, and through apathy or connivance the said minister turned a deaf ear to all his supplications as an American citizen, and was thereby guilty of a glaring dereliction of duty; therefore,

Resolved, That the said Charles Francis Adams deserves censure, if not recall, at the hands of our government.

Resolved, also, That a copy of the above be sent to the Secretary of State, and another to our representative in Congress.

ALBERT HOBBS, *Chairman*.

EUGENE WILBER, *Secretary*.

JOINT RESOLUTIONS

No. 1, declaring it to be the duty of the general government to protect American citizens in the enjoyment of all their rights as such while sojourning in foreign countries.

Resolved by the Senate, (the assembly concurring,) That it is the duty of the United States government to define and declare authoritatively the rights and duties of the citizens thereof temporarily sojourning in foreign countries, and to protect and defend all classes of her citizens in the full enjoyment of their rights thus defined and declared against all infringements thereof by the governments of the countries in which they may be so temporarily sojourning, by every means within its power; that the principle derived from the feudal system, that the masses of the people belong to the government under which they were born, contended for by the monarchical governments of Europe, by asserting and seeking to enforce the doctrine, "once a subject always a subject," is repugnant to the dictates of enlightened civilization, and opposed to the rights and best interests of mankind; that expatriation is one of the inalienable rights of man, and from the time when any foreign citizen or subject renounces his former allegiance and becomes domiciled in this country with the intention, in good faith, to become a citizen of the United States, he should be regarded, during the continuance of such domicile, as invested with our national character and entitled to the protection of our national government; that no distinction should be tolerated between native-born and duly naturalized citizens of the United States in regard to their immunities and privileges in foreign countries, and that a naturalized citizen of the United States, temporarily sojourning within the dominions of his former sovereign, can only be compelled to enter the military service or otherwise support the government of such former sovereign to the same extent and under the same circumstances as might be required of a native-born American citizen thus temporarily domiciled in such foreign country.

Resolved, That the governor is hereby requested to transmit a copy of these joint resolutions to the President of the United States, the Secretary of State of the United States, and to each of our senators and representatives in Congress.

A. M. THOMSON,
Speaker of the Assembly.
 WYMAN SPOONER,
President of the Senate.

Approved January 22, 1868.

LUCIUS FAIRCHILD, *Governor.*

STATE OF WISCONSIN,

Office of the Secretary of State, ss :

I, Thomas S. Allen, secretary of state of the State of Wisconsin, do hereby certify that the foregoing has been compared with the original enrolled resolutions deposited in this office, and that the same is a true and correct copy thereof.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State of Wisconsin, at the capitol in Madison, this 30th day of January, A. D. 1868.

[SEAL.]

THOS. S. ALLEN,
Secretary, of State.



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